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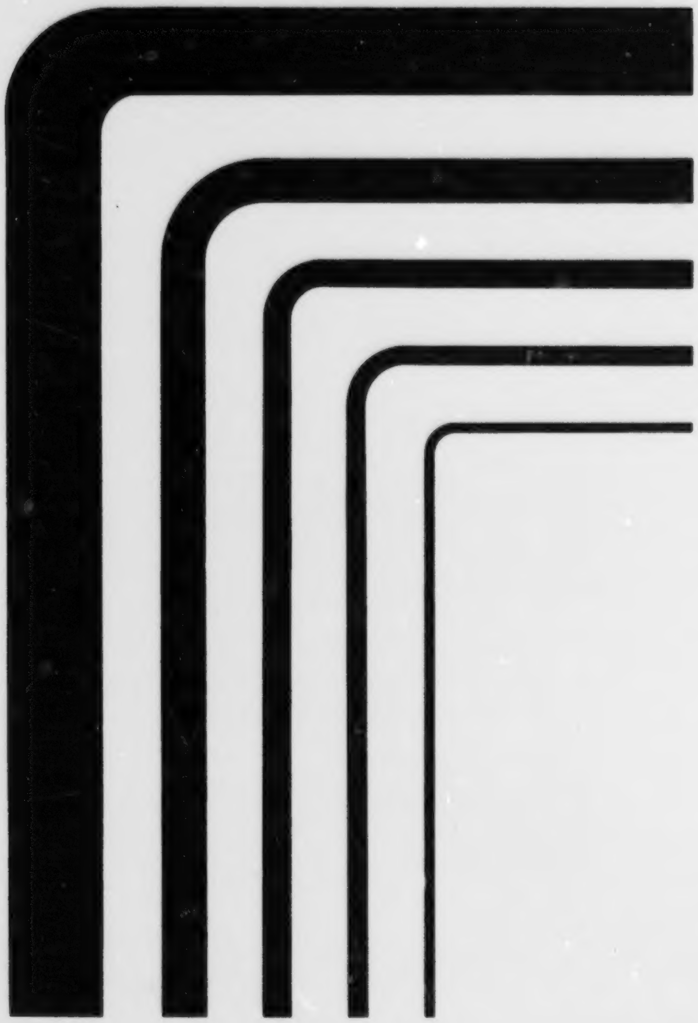
labour standards in Canada

1986 edition



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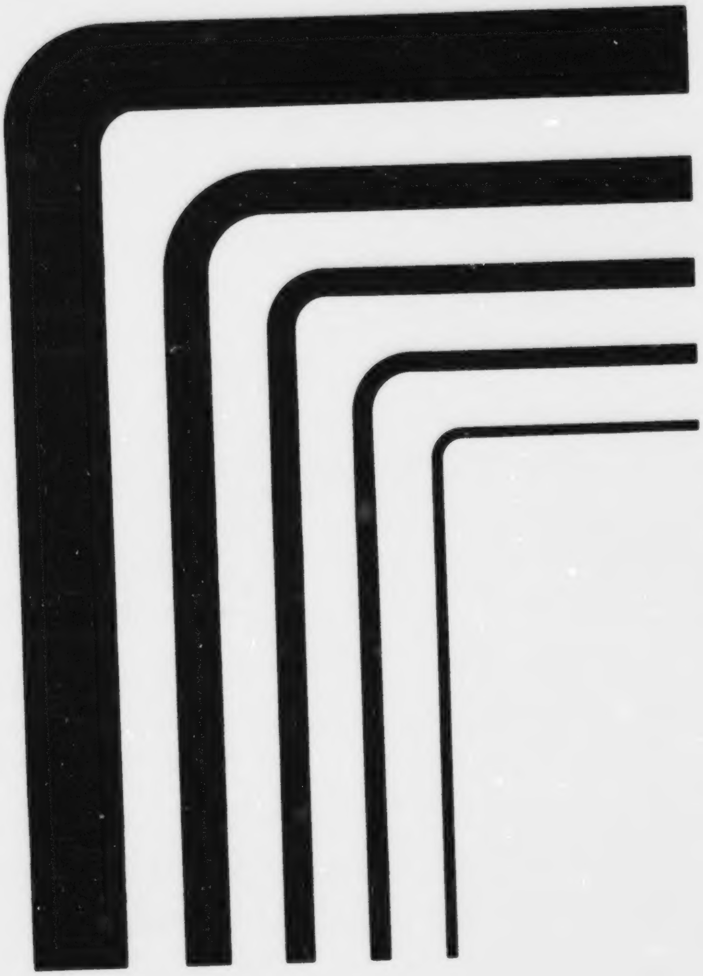

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DIVISION OF LEGISLATIVE POWERS

Both the Parliament of Canada and the provincial legislatures have the power to enact labour laws. The jurisdiction of the provincial and federal governments arises from the Constitution Act, 1867, Sections 91 and 92. Judicial interpretation of these sections gives provincial legislatures major jurisdiction, with federal authority limited to a narrow field.

Provincial authority is derived from the "property and civil rights" subsection of the Constitution Act, 1867. The right to enter into contracts is a civil right, and since labour laws impose certain restrictions on contracts between employers and employees, they fall within provincial authority as property and civil rights legislation. Provinces also have the right to legislate as to "local works and undertakings."

Federal jurisdiction in the labour law field arises from the right to regulate certain subjects expressly assigned to Parliament by Section 91 of the Constitution Act, 1867, or expressly excepted from provincial jurisdiction by Section 92. These subjects are of a national, international or interprovincial nature. In addition, Parliament has jurisdiction to regulate works wholly within a province which have been declared by Parliament to be works "for the general advantage of Canada or for the advantage of two or more of the provinces", as, for example, grain elevators, feed mills and uranium mines. By virtue of its exclusive power to regulate certain works and undertakings, Parliament has the incidental power to enact labour laws relating to those works and undertakings.

The Canada Labour Code applies to:

(1) Works or undertakings connecting a province with another province or country, such as railways, bus operations, trucking, pipelines, ferries, tunnels, bridges, canals and telegraph, telephone and cable systems.

(2) All extra-provincial shipping and services connected with such shipping, e.g., longshoring.

(3) Air transport, aircraft and airports.

(4) Radio and television broadcasting.

(5) Banks.

(6) Defined operations of specific works that have been declared to be for the general advantage of Canada or of two or more provinces, such as flour, feed and seed cleaning mills, feed warehouses, grain elevators and uranium mining and processing.

(7) Federal Crown corporations where they are engaged in works or undertakings that all fall within section 91 of the Constitution Act, 1867, or where they are an agency of the Crown, e.g., the Canadian Broadcasting Corporation and the St. Lawrence Seaway Authority.

The jurisdiction of Parliament is generally limited to the above industries, with certain possible additions arising from subsequent judicial decisions.

In addition, Parliament has exclusive jurisdiction to pass laws dealing with the Yukon and Northwest Territories. Parliament has enacted legislation for local government in each territory, granting power over property and civil rights and matters of a local and private nature. Accordingly, the territorial governments have virtually the same legislative powers with regard to labour laws as do the provinces.

Labour standards legislation has been enacted by the territorial councils of the Yukon and Northwest Territories in most of the fields of legislation covered by this publication. Labour standards ordinances, modelled on the Canada Labour Code, Part III (Labour Standards), with modifications to meet the particular requirements of the territories, went into force July 1, 1968. The ordinances were revised in 1971 and in 1984 in the Yukon and in 1974 in the Northwest Territories. The ordinances established minimum standards of hours of work, wages, weekly rest-days, annual vacations and general holidays for employees in the two territories. Previous to the enactment of the Northwest Territories ordinance, the only labour standards applicable were those established by mines legislation. Standards in the Yukon ordinance replaced those previously laid down in the Yukon Labour (Minimum Wages) Ordinance, the Labour Provisions Ordinance and the Annual Vacations Ordinance.

In each territory, the ordinance is administered by a labour standards officer appointed by the commissioner. The Northwest Territories legislation provides for a Labour Standards Board, consisting of five members and having responsibility for hearing appeals of decisions of the labour standards officer. Under the terms of the Yukon ordinance, the commissioner must appoint an Advisory Board that is representative of the interests of the employers and the employees.

The ordinances apply to employers and employees in any work, undertaking or business of a local or private nature in the territories. The Northwest Territories ordinance excludes domestic servants in private homes, trappers, persons engaged in commercial fisheries and managers, superintendents or persons who exercise management functions. Members or students of designated professions may be excluded by regulations. The Yukon ordinance applies generally but certain classes of employees are excluded from Part I governing hours of work.

STATUTORY SCHOOL-LEAVING AGE

In all provinces there is a school attendance law which makes it compulsory for children between specified ages to attend school. Exceptions are permitted where a child is unable to attend because of illness or other unavoidable cause and, in most provinces, because of distance from school (where no conveyance is provided) or lack of school accommodation. Some acts stipulate that a child may be excused from attendance before reaching the statutory school-leaving age if she or he has already attained a specified standing. An exception may also be granted in special cases, if it appears to be in the interest of the child that she or he should be excused from school attendance, or where the child is certified to be under efficient instruction elsewhere.

In Manitoba, a child over 15 may be permitted to leave school on production of a certificate signed by his or her parent or guardian, the school attendance officer and the superintendent of schools or, if there is no superintendent, by the school inspector.

In five provinces, a child may be exempted from school attendance temporarily on the application of his or her parent or guardian, if the child's services are required for necessary farm or home duties or for employment. The New Brunswick Schools Act states that the minister of education may issue a certificate relieving a child from school attendance for a maximum of six weeks in each school term, on the written application of the child's parent, if she or he agrees with the reasons for such application. In Prince Edward Island, the minister of education may certify in writing to the regional school board that a child should be exempted from school attendance. No such exemptions are provided for in Alberta, British Columbia and Ontario.

In the Northwest Territories, if a child reaches the age of fifteen after December 31, he or she must attend until the end of the school year. In the Yukon a pupil must attend school until the last day in June in the year in which she or he attains the age of sixteen years. As in the provinces, a child may be exempted from school attendance if under instruction in some other satisfactory manner, if prevented from attending school for any unavoidable cause, or if he or she has reached a standard of education equal to or higher than that to be attained in the school. In the Northwest Territories, a child may be allowed to leave school before the statutory school-leaving age if she or he has completed grade eight or its equivalent. An exception is also permitted in the Northwest Territories in the case of a child who is unable to attend because of distance from school or lack of school accommodation.

The employment of children of school age during school hours is forbidden unless a child is excused for any reason provided in the acts. The school-leaving age in each province and territory and the provisions for exemption for employment are shown in the table below.

1. STATUTORY SCHOOL-LEAVING AGES AND WORK EXEMPTIONS

Jurisdiction and Legislation	School-leaving Age	Work Exemptions
Alberta The School Act	16	Work experience program approved by the Minister of Education, the Director under the Employment Standards Act and the parents of the children.
British Columbia The Schools Act	15 — unless course completed at nearest public school and transport to higher school not provided.	
Manitoba The Public Schools Act	16	Over 15, with certificate signed by parent or guardian, attendance officer and superintendent of schools.
New Brunswick Schools Act	15 — unless grade 12 passed.	For not more than 6 weeks in each school term if minister agrees with reasons for parents' application.
Newfoundland The School Attendance Act	15 — must attend to end of school year.	For period stated in certificate if services needed for maintenance of self or others. Child under 12 for not more than 2 months in a school year except with approval of Minister.

Jurisdiction and Legislation	School-leaving Age	Work Exemptions
Nova Scotia The Education Act	16	If 12, for not more than 6 weeks in a school year if services needed for home duties or other necessary employment. If 13, with employment certificate if services needed for maintenance of self or others; medical certificate may be required.
Ontario Education Act	16 — unless secondary school or equivalent completed. Must attend to end of school year.	
Prince Edward Island School Act	16	If grade 12 completed or minister certified exemption from school attendance.
Québec Education Act	15 — must attend to end of school year.	For not more than 6 weeks in a school year if services needed in farming, home duties or maintenance of self or relatives.
Saskatchewan Education Act (1978)	16 — unless eigth grade or equivalent completed and exempted by superintendent	Work experience program approved by the Board of Education.

Jurisdiction and Legislation	School-leaving Age	Work Exemptions
Northwest Territories School Act	15 — must attend to the end of the school year if after December 31, or unless grade eight or equivalent passed. Also where distance from or lack of school accommodation prevents attendance.	
Yukon Territory School Act	16 — unless for unavoidable cause, has reached a standard equal to or higher than school's standard, or being instructed in a manner and to a standard satisfactory to the superintendent.	

MINIMUM AGE FOR EMPLOYMENT

The Canada Labour Code, Part III, and regulations do not set an absolute minimum age for employment, but lay down conditions under which persons under 17 years may be employed in federal undertakings. A person under 17 may be employed in a federal industry only if he or she is not required to be in attendance at school under the laws of the province; the employment is not likely to endanger health or safety; and is not underground in a mine or in work prohibited for young workers under the Explosives Regulations, the Atomic Energy Control Regulations or the Canada Shipping Act.

Employment for workers under 17 is subject to two further conditions: that an employee under 17 is not required or permitted to work between 11 p.m. and 6 a.m.; and that the employee is paid not less than $3.25 an hour, unless undergoing on-the-job training under an approved training plan.

The Canada Shipping Act fixes a minimum age of 15 for employment at sea.

In the provincial jurisdictions, the minimum age for employment is set by a variety of legislation: employment standards acts, child welfare acts, factory or industrial safety laws, minimum wage orders, mining acts, and apprentices and tradesmen's qualification acts.

The employment of a young person below a certain age is prohibited in Alberta without the written consent of a parent or guardian, in British Columbia without the permission of the director of employment standards, in Manitoba without the permission of the minister, in New Brunswick without the written authorization of the Occupational Health and Safety Commission, in Newfoundland without holding a licence requiring parental consent, and in Nova Scotia and Québec, during school hours, unless a work certificate has been issued to the child.

Moreover, most jurisdictions establish by regulation those occupations in which young persons may or may not be employed, according to the likelihood that such occupations may be injurious to life, health, education or welfare. Some occupations in which employment of young persons is permitted are further regulated by special conditions such as supervision of an adult, prohibition to work between certain hours and limited hours of work per day or week.

General Provisions

In Alberta, the Employment Standards Act provides that no person under the age of 15 who is required to attend school shall be employed without the written consent of his or her parent or guardian and the approval of the director of employment standards. The Lieutenant-Governor-in-Council may prescribe the conditions of such employment. Regulations under the Act specify those occupations in which persons under 15 years of age may be employed, and prohibit the employment of persons under 18 in occupations considered injurious to life, health, education or welfare.

Hence a person from 12 to 15 years of age may be employed as a delivery person or a clerk in a retail store, a clerk or a messenger in an office, a delivery person of newspapers, flyers or handbills. They may not work during school hours, and never between 9 p.m. and 6 a.m.. The written consent of a parent or guardian is required. Persons 15 to 18 years of age may not be employed in the retail business in a hotel, motel or restaurant between the hours of 9 p.m. and the following 12:01 a.m. unless constantly supervised by an adult, and never between the hours of 12:01 a.m. and 6 a.m. In other businesses, a young person can be employed during the hours of 12:01 a.m. and 6 a.m. only with the written consent of a parent or guardian and under constant supervision of an adult.

The British Columbia Employment Standards Act stipulates that no person may employ a person under the age of 15 without the permission of the director of employment standards or authorized representative, and no parent or guardian can consent to it. The director may set the conditions of such employment. The Act or the section covering child employ-ment do not apply, however, to many categories of employees; for example, children may be employed without the concern of the director in most performing arts, in caring for a child, a disabled or an infirm person, or on a work experience or occupational training program.

In Manitoba, the Employment Standards Act prohibits the employment of persons under 16 in any place where the operations of the employer include, as a substantive part, the processing, producing, manufacturing, cleaning, altering, repairing or servicing of any material, substance, article, machinery or thing by manual labour and/or by the use of machinery. The Act also provides that the Lieutenant-Governor-in-Council may make regulations prohibiting or regulating the employment of persons 16 to 18 years of age in any place of employment deemed to be dangerous, unwholesome or unhealthy. According to the Public Schools Act, a person under 16 cannot be employed during the hours in which he or she is required to be in attendance at school.

In New Brunswick, the Occupational Health and Safety Act prohibits the employment of a child under 16 years of age in any place of employment without the written authorization from the Occupational Health and Safety Commission. In addition the Commission may prohibit the employment of persons between 16 and 18 years of age in any place of employment considered to be dangerous or injurious to their health, safety or welfare. The Employment Standards Act provides that employees under 14 cannot be employed in certain occupations. Persons under 16 cannot be employed in places that are or are likely to be unwholesome or harmful to the person's health, welfare or moral or physical development. They may not be employed for more than six hours in a day, three hours on a school day. The total hours spent attending school and working cannot exceed eight. They also may not work between 10 p.m. and 6 a.m. the following day. However, the Director may issue a permit granting a special exemption to the preceding rules, where he is satisfied on reasonable grounds that such employment will not contravene the Occupational Health and Safety Act, nor will affect the child's attendance at school or his capacity to benefit from the instruction, and where the guardian has assented to such employment. The Public School Act prohibits the employment of a child during the hours in which he or she is required to be in attendance at school.

The Newfoundland Child Welfare Act defines a "child" as an unmarried boy or girl actually or apparently under the age of 16 years. Under the Act no child under 16 may be employed between the hours of 10 p.m. and 7 a.m. or in any occupation prohibited by an order of the Lieutenant-Governor-in-Council. Employers are forbidden to employ an unmarried girl under 16 in a restaurant, tavern or hotel without the written consent of her parents or guardian. Neither may a child under 16 be employed for remuneration when he or she is required to be at school by the provisions of the School Attendance Act, 1978. Certain municipal authorities are empowered to regulate, control and license the employment of children as messengers, vendors of newspapers and small wares, shoe shiners, or pin boys in bowling alleys. A licence may not be issued to a female child, a male child under 12, or without written parental consent to a male child between the ages of 12 and 14 years. Further, licence holders are forbidden to work after 8 p.m. during the months of December, January and February or after 9 p.m. throughout the rest of the year.

The Labour Standards Act of Newfoundland, which defines a "child" as a person under the age of 16, provides that no employer may employ a child to do any work that is or is likely to be unwholesome or harmful to his or her health or normal development, or prejudicial to attendance at school or to the child's capacity to benefit from instruction given at school. An employer must not employ a child to work: (1) for more than eight hours a day; (2) more than three hours on a school day unless a certificate covering that day has been issued under Section 8 of the School Attendance Act; (3) for a period which, added to the time required for attendance at school, totals more than eight hours; (4) in circumstances that would prevent a child from obtaining a rest period of at least 12 consecutive hours a day; (5) in occupations which are hazardous; (6) who is under the age of 14 years unless the work is in a prescribed undertaking; or (7) while a strike or lockout of the employer's employees is in progress.

The Nova Scotia Labour Standards Code prohibits the employment of persons under 16 years of age in work of any kind in an industrial undertaking, the forest industry, garages and automobile service, hotels and restaurants, the operating of elevators, in theatres, dance halls, shooting galleries, bowling alleys, billiard and pool rooms, and in other work prohibited by regulation. The code nevertheless provides for one exception: the foregoing prohibitions do not apply to an employer who employs members of his or her family. Further restrictions are imposed on the employment of children under 14 years. No person can employ such a child to do work that is or is likely to be unwholesome or harmful to the child's health or normal development or prejudicial to school attendance or to the child's capacity to benefit from instruction given in school. Such a child cannot work for more than eight hours in any day, or three hours on a school day, unless a certificate authorizing the employment of the child has been issued under the Education Act. Nor can he or she work for any period which, when added to school hours on that day, totals more than eight hours. A child under 14 cannot be employed between the hours of 10 p.m. and 6 a.m. on the following day, nor in any other work prohibited by regulation. The Education Act and its regulations prohibit employment of a person under 16 during school hours, unless an employment certificate has been issued to the child.

Regulations issued under The Occupational Health and Safety Act of Ontario set a minimum age for a worker or person permitted to be in or about an industrial establishment at 16 years in a logging operation, 15 years in a factory other than a logging operation and 14 years in a workplace other than a factory, except if accompanied by an adult, on a guided tour of the premises or in an area used for sales purposes or to which the public generally has access. The Education Act and its regulations prohibits the employment of a person under 16 during school hours, unless he or she has completed secondary school or its equivalent.

The Prince Edward Island law (the Minimum Age of Employment Act) sets a minimum age of 15 years for employment in mining, manufacturing, shipbuilding, electrical works, construction, transport by road, rail or inland waterway, undertakings involving the conversion, canning or packaging of any farm or sea products, and the printing and publishing of newspapers, books and magazines. These provisions do not apply to an employer's family if the employment is not dangerous to the life, health or morals of the child. On the recommendation of the minister of labour, a higher age than 15 years may be prescribed for employees under 18 where the nature of the employment may be dangerous to life, health or morals. The Act does not apply to work done by children in approved technical schools.

Previously in Québec, minimum age legislation for employment in industrial or commercial establishments was found in the Industrial and Commercial Establishments Act. Effective January 1, 1981, this Act was replaced by An Act Respecting Occupational Health and Safety, which states that regulations may be issued fixing the minimum age at which a worker may carry out particular work. To date, no new regulations have been issued. However, the regulations made under the Industrial and Commercial Establishments Act remain in force, to the extent that they are consistent with this Act, until they are amended, replaced or repealed by a regulation made under this Act. Hence, in Québec, the minimum age for employment in an industrial or commercial establishment is 16 years. The same minimum age applies to employment in hotels, restaurants, theatres and other places of amusement, and to the employment by a department store or telegraph company of boys or girls as messengers. Children of 15 years of age may be employed in any of these workplaces during school vacations, but only with a permit from the inspector.

Boys and girls under 16 are forbidden to sell papers or carry on any street trade unless they can read and write fluently, and such work may not be carried on after 8 p.m.

The Education Act also prohibits the employment of a person under 15 years of age during school hours, unless an employment certificate has been issued for the child.

A minimum wage order in Saskatchewan fixes the minimum age at which employees may be employed in any educational institution, hospital, nursing home, hotel or restaurant at 16 years, and the Education Act prohibits the employment of children under 16 during school hours. The Family Services Act defines a "child" as a boy or girl actually or apparently under the age of 16 years and makes it an offence to cause or procure a child to be employed at any time or place where such employment is detrimental to the welfare of the child by reason that the nature of the employment is unsuitable for the child, or provision has not been made to ensure his or her proper care and treatment.

The Northwest Territories' Labour Standards Act provides that persons under the age of 17 may be employed in any occupation except in occupations, and subject to such conditions, as may be prescribed by regulations. The Employment of Young Persons Regulation prohibits the employment of such persons in a place liable to be detrimental to health, education or moral character. The young persons may not work between the hours of 11 p.m. and 6 a.m. the following day without the written approval of a labour standards officer.

In the Yukon, under the Employment Standards Act, a person under the age of 17 may be employed in any occupation, except those prohibited by regulations. As yet, no regulation prescribes any restrictions.

Special Provisions

Many places of employment, such as mines, construction sites, designated trades, etc. are often considered unsuitable for young persons or children.

In all jurisdictions except Saskatchewan, a person under 16 years of age cannot be employed in a designated trade, or, in other words, become an apprentice before that age.

Construction projects are off-limits to persons under 16 in Nova Scotia, in Ontario (unless that person has attained the age of 15 and has been excused from attendance at school) and in Saskatchewan. In Prince Edward Island, the minimum age for employment in the construction industry is 15, and in the Northwest Territories, 17. In Québec, persons under 18, by virtue of the Construction Safety Code, cannot operate hoisting apparatus nor be employed underground or at the face of an open-pit site.

Mines Acts in all provinces but Prince Edward Island (which has no mining operations) fix the minimum age for employment in mines. It varies from 16 to 21 years of age. Alberta prohibits the employment of persons under 17 years of age underground in a coal mine. In British Columbia, a person under 18 cannot work below ground in any mine unless that person has reached the age of 17 and is in training. In Manitoba, it is prohibited to employ a person under 18 underground, or a person under 16 above ground in a mine. A person under 16 in New Brunswick cannot be employed in a coal mine, and persons under 18 cannot be employed underground in a metal mine, but persons aged 16 to 18 may be employed above ground in such a mine. In Newfoundland, it is prohibited for a person under 18 to work underground, but a person aged 16 may work above ground. In Nova Scotia, a person under the age of 18½ cannot work below ground in a coal mine, but persons aged 16 or more may work above ground. Ontario prohibits the employment of persons under 16 years of age in or about a mine, and only those 18 years or more may be employed underground or at the working face of a surface mine. In Saskatchewan, only persons aged 18 or more can work underground or at the working face of an open-pit mine. In the Northwest Territories, persons under 16 are prohibited in or about a mine, persons under 18 underground or at the working face of a surface mine, and persons under 21 at the controls of hoisting machinery. In the Yukon, persons under 18 cannot be employed underground or at the working face of an open-pit mine and persons under 21 cannot operate hoisting machinery.

In Alberta, special provisions regulate the employment of young persons (from 12 to 18 years old) in entertainment. They require that a licence for employment be issued by the Child Welfare Commission after it has assured itself of the absence of possible moral or physical injury and of the child's welfare.

According to the Child Welfare Act in Ontario, persons under 16 cannot engage in any trade or occupation in a place to which the public has access between the hours of 9 p.m. and 6 a.m. the following day. They may be employed in public entertainment, but only with the approval of Children's Aid Society and after ensuring proper provisions for the health and proper treatment of the child. Under the Occupational Health and Safety Act, a person under 16 is not permitted in or about a logging opperation.

A regulation issued under The Occupational Health and Safety Act in Saskatchewan states that no person under the age of 16 years may be permitted to work: (a) at or about any construction site, work of engineering construction, trench or excavation; (b) at any pulp mill, saw mill or woodworking establishment; (c) in the vicinity of industrial processes at any factory; (d) in any silo, storage bin, vat, hopper, tunnel, shaft, sewer or other confined space; (e) on the cutting line of any packing plant or the evisceration line of any poultry plant; (f) in any forestry or logging operation; (g) on any drilling or servicing rig; (h) as an operator of any heavy mobile equipment, any crane or other heavy hoisting equipment; or (i) as an operator of a forklift truck or similar mobile equipment within a place of employment or in the vicinity of other workers. The regulation also prohibits a person under 18 years of age from working underground or at the open-pit face of any mine, as a radiation worker, or in any activity for which respiratory protective equipment is required by any regulations made under the Act, except where that work is performed under close and competent supervision.

2. MINIMUM AGE FOR EMPLOYMENT

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Federal	Canada Labour Code	under 17	Only if not required to be at school under provincial legislation and the work involved falls outside excluded categories and is unlikely to endanger health or safety. Never between 11 p.m. and 6 a.m.	Canada Shipping Act	under 15	Cannot be employed at sea.
Alberta	The Employment Standards Act and Regulation	12 to 15	May be employed as a delivery person or a clerk in a retail store, a clerk or a messenger in an office, a delivery person of newspapers, flyers or handbills. Not during shool hours, and never between 9 p m. and 6 a.m. For no more than 8 hours in a day, 2 on a school day. With written consent of parent or guardian.	Child Welfare Act	12 and up	Entertainment: licence for employment from Child Welfare Commission necessary. Commission will assure itself of the absence of possible moral or physical injury and of the child's welfare.
				The Coal Mines Safety Act	under 17	Cannot work below ground, but may be employed in the mine office or on the surface.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Alberta (cont'd)		15 to 18	May not be employed in the retail business in a hotel, motel or restaurant between the hours of 9 p.m. and the following 12:01 a.m. unless constantly supervised by an adult, and never between the hours of 12:01 a.m. and 6 a.m. In other businesses, the young person can be employed between the hours of 12:01 a.m. and 6 a.m only with written consent from parent or guardian and under constant supervision of an adult.	The Manpower Development Act	under 16	Cannot be employed in a designated trade. Apprentices must be 16 years of age and over.
British Columbia	The Employment Standards Act and Regulations	under 15	Not without permission of the Director of Employment Standards, and only under conditions of such permit. But the Act does not apply to members of	The Mines Act	under 18	Cannot be employed below ground. But a person who has reached the age of 17 may be employed underground for the purpose of training.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
British Columbia (cont'd)			certain specified professions, nor to students in a work experience or occupational training program, persons employed in a private residence to attend to a child, or a disabled or infirm (etc.) person, nor to persons receiving income under a specified employment incentive program. This provision also does not apply to artists, musicians, actors or performers, to disabled employees of a charity receiving therapy, and to various other occupations.			
Manitoba	The Employment Standards Act	under 16	Cannot be employed in the manufacturing industry. Cannot be employed in the businesses except with	Regulation under the Mines Act	16 to 18	Cannot be employed underground. A person of 16 years of age to 18 may be employed above ground.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Manitoba (cont'd)			permission of the minister and only according to the conditions of the permit. Must never be employed where detrimental to health, safety or moral well-being.	The Apprenticeship and Tradesmen's Qualifications Act	under 16	Cannot work in a designated trade. Apprentices must be at least 16 years of age.
	Public School Act	under 16	Not during the hours in which the child is required to be in attendance at school.			
New Brunswick	Occupational Health and Safety Act	under 16	Not without the written authorization of the Occupational Health and Safety Commission.	The Mining Act (Regulation)	under 16	Cannot be employed in a coal mine.
					16 to 18	Cannot be employed underground in a metal mine. A person of 16 to 18 may be employed above ground.
		under 18	May be prohibited by the commission in any place of employment (including the construction industry) likely to endanger the health or safety of that person.	The Industrial Training and Certification Act	under 16	Cannot work in designated trades. Apprentices must be at least 16.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
New Brunswick (cont'd)	Employment Standards Act	under 14	Cannot be employed in: any industrial undertaking; the forest industry; the construction industry; a garage or service station; a hotel or restaurant; a theatre, dance hall or shooting gallery; as an elevator operator; or in any other occupation prescribed by regulation.			
		under 16	Not in employment that is or is likely to be unwholesome or harmful to the person's health, welfare or moral or physical development. For no more than 6 hours in a day, 3 on a school day. for a total of no more than 8 hours attending school and working. Never			

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
New Brunswick (cont'd)			between 10 p.m. and 6 a.m. the following day. The Director can issue a permit granting a special exemption to the preceding rules, provided that he is satisfied on reasonable grounds that such employment will not contravene the Occupational Health and Safety Act, prejudice attendance at school or capacity to benefit from instruction and has been assented to by the parent or guardian.			
	Schools Act	under 15	Not during hours of required school attendance.			

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Newfoundland	The Labour Standards Act	under 16	Not in work that is likely to be unwholesome or harmful to health and prejudicial to school attendance. Some occupations are prohibited by order of the Lieutenant-Governor. Never during school hours and between the hours of 10 p.m. and 7 a.m. For no more than 8 hours in a day, 3 on a school day. Not while a strike or lock-out of employees is in progress.	Mines and Quarries Act and Regulations	16 to 18	Cannot obtain a miner's permit. Cannot work underground. May work above ground.
				The Apprenticeship Act	under 16	Cannot work in designated trades. Apprentices must be 16 or older.
		under 14	Not unless the work is prescribed work within prescribed undertakings.			
	The Child Welfare Act	12 to 14	May be employed as messengers, vendors of newspapers and small wares, shoe shiners or pin boys. Not after			

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Newfoundland (cont'd)			8 p.m. in winter months or 9 p.m. the rest of the year. Must hold a licence requiring parental consent.			
Nova Scotia	Labour Standards Code	under 16	Cannot be employed in an industrial undertaking, the forest industry, garages and service stations, hotels and restaurants, the operating of elevators, theatres, dance halls, shooting-galleries, bowling-alleys, billiard and pool rooms and other work prohibited by regulation, unless employed in a family business.	Coal Mines Regulation Act	under 18½	Cannot work below ground.
				Metalliferous Mines and Quarries Regulation Act	under 16	Cannot work below ground nor above ground.
		under 14	Cannot do work that is likely to be unwholesome or harmful to health or prejudicial to school attendance.	Construction Safety Act	under 16	Cannot be employed on a construction project.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Nova Scotia (cont'd)			For no more than 8 hours a day, or 3 on a school day unless authorized. May not work on a day when school and work hours exceed 8. Not between 10 p.m. and 6 a.m.	Apprenticeship and Tradesmen's Qualification Act	under 16	Cannot enter into an apprenticeship agreement.
	Education Act and Regulations	under 16	Not during school hours, unless a work certificate has been issued to the child.			
Ontario	Occupational Health and Safety Act and Regulations	under 14	Cannot be employed in or about any industrial establishment.	The Child Welfare Act	under 16	Cannot engage in any trade or occupation in a place to which the public has access, between the hours of 9 p.m. and 6 a.m. May be employed in public entertainment, but only with the approval of the Children's Aid Society and after ensuring proper provisions for the health and proper treatment of the child.
		under 15	May not be employed in or about a factory. But may be employed elsewhere if the work is unlikely to endanger the child's safety.			

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Ontario (cont'd)		under 16	Not permitted in or about a logging operation. Nor in or about a construction project, unless the child has attained the age of 15 and has been excused from attending school. Not permitted to be in or about a mine or a mining plant.	Apprenticeship and Tradesmen's Qualification Act and Regulation	under 16	Cannot work in designated trades. An apprentice must be at least 16 years of age and have a grade 10 standing or the equivalent, or the qualifications prescribed in the regulations for the trade.
		16 to 18	Not permitted in an underground mine or at the working face of a surface mine.			
	Education Act	under 16	Never during school hours, unless secondary school, or equivalent, completed.			
Prince Edward Island	The Minimum Age of Employment Act	under 15	Unless in a family business, and then only if the work is not dangerous to health or morals, cannot be employed in an industrial	Apprenticeship and Tradesmen's Qualification Act	under 16	Cannot work in designated trades. An apprentice must be at least 16 years of age and have a grade 10 standing or its equivalent.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Prince Edward Island (cont'd)			undertaking (i.e., manufacturing, mining, shipbuilding, electricity, construction and transportation). The Act does not apply to work done by children in approved technical schools. On the recommendation of the Minister of Fisheries and Labour, a higher age than 15 may be prescribed as the minimun, where the nature of the work may be dangerous to life, health or morals.			
Quebec			(This subject used to be covered by the Industrial and Commercial Establishments Act. This Act was replaced, effective January 1, 1981, by An Act Respecting Occupational Health and	The Construction Safety Code	under 18	Cannot work on a hoisting apparatus, nor be employed at the controls of hoisting or moving equipment. Not underground nor at the face of an open-pit site.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
			Safety, which contains no such provision).)	Manpower Vocational Training and Qualification Regulation	under 16	Cannot become an apprentice in the designated trades before 16.
	Education Act	under 15	Not during school hours, unless a certificate has been issued for the child.			
Saskatchewan	Minimum Wage Order No. 2 (1981)	under 16	Cannot be employed in any educational institution, hospital, nursing home, hotel or restaurant.	Apprenticeship and Tradesmen's Qualification Act	under 16	Cannot work in designated trades. An apprentice must be at least 16 years of age.
	Education Act	under 16	Not during school hours.			
	The Family Services Act	under 16	Not at a time or place where such employment is detrimental to the child.	Occupational Health and Safety Act and Regulations	under 16	Cannot be employed at or about any construction site, work of engineering construction, trench or excavation; at any pulp mill, sawmill or woodworking establishment; in the vicinity of industrial processes at any factory; in any

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Saskatchewan (cont'd)					Under 16 (cont'd)	silo, storage bin, vat, hopper, tunnel, shaft, sewer or other confined space; on the cutting line of any packing plant or the evisceration line of any poultry plant; in any forestry or logging operation; on any drilling or servicing rig; as an operator of any heavy mobile equipment, any crane or other heavy hoisting equipment; nor as an operator of a fork-lift truck or similar mobile equipment within a place of employment or in the vicinity of other workers.
					Under 18	Cannot work underground or at the working face of an open-pit mine, nor as

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Saskatchewan (cont'd)					under 18 (cont'd)	a radiation worker, nor in any activity for which respiratory protective equipment is required by any regulation made under the Act, except where that work is performed under close and competent supervision. Cannot work in any asbestos process, nor in any place where asbestos is likely to be present, except if in apprenticeship.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Northwest Territories	Labour Standards Act	under 17	May be employed in any occupation except in such occupations and subject to such conditions as may be prescribed by regulation.	Employment of Young Persons Regulations	under 17	Cannot be employed in the construction industry without the written approval of a labour standards officer.
	Employment of Young Persons Regulation	under 17	Not in a place liable to be detrimental to the health, education or moral character of the young person. Never between the hours of 11 p.m. and 6 a.m. without the written approval of a labour standards officer.	Apprentices and Tradesmen's Act	under 16	Cannot be employed in or about a mine.
				Mining Safety Act	under 18	Cannot be employed underground or at the open face of any open cut working, pit or quarry.
					under 21	Cannot operate a hoist at a mine.

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Yukon Territory	Employment Standards Act	under 17	May be employed in any occupation except in such occupations and not contrary to such conditions as may be prescribed.	Apprentice Training Act	under 16	Cannot work in a designated trade. Apprentices must be at least 16 years old.
				Mining Safety Act	under 18	Not to be employed underground or at the working face of any open-cut workings, pit or quarry.
					under 21	Cannot operate a hoist at a mine.

MINIMUM WAGE

Minimum wage legislation is in force in the federal jurisdiction, all Canadian provinces and the two territories.

The Canada Labour Code (Part III, Division II) sets a minimum rate for employees 17 years of age and over in the federal industries. This rate may be increased from time to time by order of the Governor-in-Council. The rate for persons under 17 is established by regulation.

Employees who are paid on other than a time basis, such as pieceworkers and persons paid a mileage rate, are required to be paid the equivalent of the minimum wage.

An employer who is providing on-the-job training to increase the skill or proficiency of his employees, in accordance with conditions prescribed by the regulations, may be exempted from paying the minimum wage to such employees during the whole or part of the training period.

The Code also provides for the payment of a wage lower than the minimum rate to handicapped employees under a system of individual permits.

Minimum wages are regulated by the following legislation -- the Alberta Employment Standards Act, Part 3, Division 3; the British Columbia Employment Standards Regulation (B.C. Reg. 37/81); the Manitoba Employment Standards Act, Part II; the Newfoundland Labour Standards Act; the New Brunswick Employment Standards Act; the Nova Scotia Labour Standards Code, Sections 48 to 54; the Ontario Employment Standards Act, 1974, Part V; the Prince Edward Island Labour Act, Part III, Section 63; the Québec Act Respecting Labour Standards, Ch. IV, Division I; the Saskatchewan Labour Standards Act, 1977, Part II; the Labour Standards Act of the Northwest Territories, Part II; the Yukon Territory Employment Standards Act, Part II.

Minimum Wage Boards

In most provinces, minimum wage boards or other labour boards are authorized by law to recommend minimum rates of wages or to establish such rates with the approval of the Lieutenant-Governor-in-Council. In Alberta, British Columbia, Newfoundland and Ontario, minimum rates are established by the Lieutenant-Governor-in-Council. The rates are imposed by minimum wage orders or, in Alberta, British Columbia, Newfoundland, Nova Scotia, Québec, Ontario and Manitoba, by regulations under the provincial employment standards act.

Except in Manitoba and New Brunswick, the acts do not specify how the minimum wage is to be determined. In these two provinces, the board is directed to take into consideration and be guided by "the cost to an employee of purchasing the necessities of life and health."

The practice is to fix a general basic wage, taking into account the cost of living, economic conditions and other relevant factors. The minimum wage rate is set mainly for the protection of the unorganized and unskilled workers. It constitutes a floor above which employees or their trade unions may negotiate with management for a higher standard. The boards hold public hearings and make extensive inquiries before minimum wage orders are put into effect. Minimum wage orders are reviewed fairly frequently.

The boards are composed of members who represent the interests of employers and employees and in some cases the general public, with an impartial chairman, frequently an officer of the department of labour.

Coverage

In most provinces, minimum wage orders now cover practically all employment. Special rates for domestic workers are set in British Columbia, Newfoundland, Ontario and Québec. In Prince Edward Island domestic workers receive the general minimum wage, with the exception of those persons employed for the sole purpose of protecting and caring for children in private homes. In Saskatchewan, a domestic whose employer is in receipt of a publicly funded wage subsidy must be paid the minimum wage for all hours worked up to eight hours a day. All other jurisdictions, with the exception of Manitoba where domestics who work more than 24 hours in a week are covered by the Employment Standards Act, exclude domestic workers from the application of the minimum wage provisions.

Farm labour is also excluded in most provinces as well as the Yukon and Northwest Territories. In British Columbia a farm or horticultural worker who is paid wages other than on an hourly or piecework basis is to be paid $29.20 for each day or part of a day worked. Farm workers employed on a piece work basis to hand-harvest fruit, vegetable or berry crops are covered by a special regulation. In Québec, farm labourers with the exception of those working for fruit or horticultural enterprises and those principally involved with non-mechanized operations are covered.

A few other classes of workers are excluded in most jurisdictions. Typical exclusions are supervisory and managerial employees, certain categories of employed students, registered apprentices, certain categories of sales persons, and members and students of professions.

Minimum wage orders apply to both men and women.

Special Orders

In all provinces general orders are issued setting hourly rates that apply to most workers throughout the province. In five provinces, these general orders are supplemented by special orders applying to a particular industry, occupation or class of workers, and in some cases taking into account a special skill.

Québec has four industry orders governing public works, the retail food trade, sawmills and forestry operations. Formerly there were eight special orders.

The other provinces set only a few special rates. Nova Scotia has established rates for employees in beauty parlors and province-wide rates for logging and forest operations and for road building and heavy construction. Manitoba has established special rates for construction. A weekly rate has been set in Alberta for salespersons. Special rates contained within the general regulations in Ontario apply to the construction and ambulance service industries, and hunting and fishing guides.

In the Northwest Territories, Labour Standards Regulations were issued under the Labour Standards Act. The Act requires the payment of a minimum rate of wages to employees who are 17 years of age and over, with the exception of those employed as domestic servants, trappers, persons engaged in commercial fisheries, and members of certain professions.

Where employees are paid on a basis other than time, or on a combined basis of time and some other basis, they are entitled to receive the equivalent of the minimum wage.

In the federal jurisdiction the Minister of Labour is authorized to exempt employers of trainees from the minimum wage requirements, provided that the trainees are paid at least at a rate not less than that which the Minister may order.

In two provinces the orders provide that inexperienced workers may be employed during a specified period at a rate below the regular minimum. These rates may be applicable generally or to a particular occupation.

Provision is also made in the legislation of almost all jurisdictions for the employment of handicapped workers at rates below the established minimum, usually under a system of individual permits. In British Columbia, disabled employees of a charity who are receiving therapy or engaged in a therapeutic work program are excluded from entitlement to the minimum wage.

In all jurisdictions except New Brunswick, Newfoundland, Saskatchewan and the Yukon Territory, the orders set special minimum rates for young workers[1]. A student rate is set in Ontario. In Alberta, there is a special rate for young persons attending school and another for those who are not.

In addition to setting minimum wage rates, minimum wage legislation usually contains other related provisions intended to protect the worker. The most prevalent of these provisions are described below.

Gratuities

Tipping is dealt with specifically in the federal, Alberta, British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Québec, Northwest Territories and Yukon legislation. These provisions make it clear that gratuities are not to be counted as part of wages. In New Brunswick the Employment Standards Act establishes that money paid as a tip or gratuity, or as a surcharge or other charge in lieu of a tip or gratuity is the property of the employee to whom or for whom it is given and shall not be withheld by the employer. The Québec Labour Standards Act states that tips are the exclusive property of the employee, and the employer is not allowed to deduct them or to consider them as part of the wages paid. The Act also states that any gratuity collected by the employer must be given to the employee. A "gratuity" includes the service charge added to the patron's bill. Boards in other provinces take the position that gratuities are not to be regarded as wages. In Manitoba, Ontario and Québec special rates are set for those employees who usually receive tips. (See Table 6)

Deductions

There are provisions in the orders of most provinces and the territories (and also in the federal Labour Code) relating to the charges or deductions for board and lodging, where furnished by the employer to the employee.

In some jurisdictions (federal, Alberta, Newfoundland, Nova Scotia, Prince Edward Island, Québec, the Northwest Territories and the Yukon), the orders set limits on the amounts by which such charges may reduce the minimum wage. The Ontario orders fix the maximum amounts at which meals or a room or both may be valued for minimum wage purposes, where board and lodging are provided as part of wages. In the other provinces, the orders set the maximum charges or deductions that may be made.

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[1] Please note that in the federal jurisdiction and the Northwest Territories, the minimum wage rate applicable to young workers will be abolished when the new rates will be proclaimed. These two jurisdictions will join the ranks of the four above-named provinces where the general minimum wage rate applies to young workers.

The Northwest Territories stipulates that an employee's wages must not be reduced below the minimum wage for meals supplied; the furnishing and upkeep of uniforms; or for accidental breakages.

Maximum charges or deductions are not set in British Columbia. If the board finds that services are inadequate or charges are excessive, it may specify the maximum charges that may be made.

Requirements are also laid down in some minimum wage orders regarding the provision and maintenance of uniforms, where these are required to be worn.

Call-in-pay

Most general orders contain a "daily guarantee" or "call-in-pay" provision requiring that an employee who is called to work be paid for a certain number of hours, even if he is not put to work or if he works for a shorter period. This two, three, or four-hour minimum period, as the case may be, must be paid for at the minimum rate, except in British Columbia, where payment is required at the employee's regular rate of pay.

Under a Northwest Territories regulation, an employee who is required to report for work must be paid a minimum of four hours' pay at his or her regular rate.

3. Minimum Wage Rates for Experienced Adult Workers

Jurisdiction	Rate	Effective Date
Federal	$3.50 $4.00	May 1, 1981 May 1986 (precise date not available)
Alberta	$3.80	May 1, 1981
British Columbia	$3.65	March 14, 1981
Manitoba	$4.30	January 1, 1985
New Brunswick	$3.80	October 1, 1982
Newfoundland[1]	$4.00	January 1, 1985
Nova Scotia	$4.00	January 1, 1985
Ontario	$4.00	October 1, 1984
Prince Edward Island	$3.75	October 1, 1982
Québec	$4.00	October 1, 1981
Saskatchewan	$4.50	August 1, 1985
Northwest Territories	$4.25 $5.00	August 1, 1982 (date to be fixed by proclamation)
Yukon Territory	$4.25	January 1, 1985

[1] Sixteen years of age and over.

4. Minimum Wage Rates for Young Workers and Students*

Jurisdiction	Rates		Effective Date
Federal[1]	Employees under 17:	$3.25	May 1, 1981
Alberta	Employees under 18 not attending school:	$3.65	May 1, 1981
	Employees under 18 attending school:	$3.30	May 1, 1981
British Columbia	Employees 17 and under:	$3.00	March 14, 1981
Manitoba	Employees under 18:	$3.85	January 1, 1985
Nova Scotia	Underage employees 14 to 18:	$3.55	January 1, 1985
Ontario[2]	Students under 18 employed for not more than 28 hours in a week or during a school holiday:	$3.15	October 1, 1984
Prince Edward Island	Employees under 18:	$3.00	October 1, 1982
Québec	Employees under 18:	$3.54	October 1, 1981
Northwest[3] Territories	Employees under 17:	$3.75	August 1, 1982

*New Brunswick, Newfoundland, Saskatchewan and the Yukon Territory have no special rates for young workers or students.

[1,3] Federal, Northwest Territories -- This category will be abolished upon proclamation of the new minimum wage rates.

[2] Ontario -- Student rates do not apply to the ambulance or construction industries.

5. Minimum Rates and Learning Periods for Inexperienced Workers*

Jurisdiction	Rates and Learning Periods		Effective Date
Nova Scotia	During first three months of employment:	$3.55	January 1, 1985
Ontario[1]	During first month of employment:	$3.90	October 1, 1984

*No provision for lower rates for learners in Alberta, British Columbia, Manitoba, Prince Edward Island, New Brunswick, Newfoundland, Québec or Saskatchewan. In addition to the general rate for experienced workers, Nova Scotia has a learner's rate for beauty parlours.

[1] Ontario -- Not more than 20 per cent of total number of employees in an establishment may be employed as learners, and only persons who have no previous experience in the work may be paid learners' rates. An employer whose total number of employees is less than five may employ one employee as a learner.

6. Minimum Wage Rates for Other Categories of Employees

Jurisdiction	Rates and Categories	Effective Date
Alberta	Various categories of salespersons: $150 per week	May 1, 1981
British Columbia	Live-in homemakers, domestics, farm workers or horticultural workers paid wages other than on an hourly or on piecework basis: $29.20 per day or part of a day worked	March 14, 1981
	Resident caretakers in apartment buildings of 8 to 60 units: $219 per month plus $8.76 per unit	December 1, 1980
	Buildings of more than 60 units: $744 per month	December 1, 1980
Newfoundland	Domestics employed in a private home (16 and over): $2.75 per hour	January 1, 1985
Ontario	Employees serving alcoholic beverages in licensed establishments: $3.50 per hour	October 1, 1984
	Construction Workers: $4.25 per hour	October 1, 1984
	Domestic employees* (cooks, housekeepers, nannies) who work more than 24 hours a week: $32 per day $176 per week $757 per month, or $4.00 per hour	March 1, 1985

*Does not apply to babysitters or companions.

6. Minimum Wage Rates for Other Categories of Employees (continued)

Jurisdiction	Rates and Categories		Effective Date
Québec	Employees in hotels, restaurants, campgrounds, trailer parks or enterprises that sell, deliver or serve meals to be consumed off the premises, or serve liquor:		
	18 and over:	$3.28 per hour	October 1, 1981
	Under 18:	$2.95 per hour	October 1, 1981
	Domestic workers residing at the employer's residence:	$134 per week	October 1, 1981
	Domestics who do not reside at the employer's residence and agricultural workers:		
	18 and over:	$4.00 per hour	October 1, 1981
	Under 18:	$3.65 per hour	April 1, 1981

7. Maximum Charges Permitted for Board and Lodging*

Jurisdiction	Meals		Lodging		Board and Lodging
	single	per week	per day	per week	per week
Federal	50¢		60¢		
Alberta	$1.25		$1.60		
Manitoba	50¢			$5.00	
Newfoundland	$1.20	$19.00		$9.00	$29.00
Nova Scotia[1]	$1.60	$25.00		$7.00	$31.00
Ontario[2]	$1.55	$31.50		$19.50	$51.00
Prince Edward Island	$2.50	$32.00		$17.00	$40.00
Québec	$1.25	$16.45		$16.45	$32.90
Northwest Territories	65¢		80¢		

*No maximum charges set in British Columbia and Saskatchewan.

In Saskatchewan, a meal may not cost more than 1/3 of the minimum hourly wage, except where the hourly wage of the employee is more than 25% above the minimum hourly wage.

[1] Nova Scotia -- Logging and forest operations; board and lodging, $4.90 per day; construction, no charges set; beauty parlour employees same as table.

[2] Ontario -- Domestics and nannies: single meal $1.60 each to a maximum of $32.50 weekly; room, $22.50 weekly; board and lodging, $55 weekly. Fruit, vegetable and tobacco harvesters: meals $1.55 each, $31.50 weekly maximum; room $19.50 a week; room and meals $51 a week; housing accommodation $44 a week; serviced housing accommodation $59 a week.

EQUAL PAY

In five jurisdictions, equal pay provisions are part of employment standards legislation: the Manitoba Employment Standards Act; the Nova Scotia Labour Standards Code; the Ontario Employment Standards Act, 1974; the Saskatchewan Labour Standards Act, 1977; and the Yukon Labour Standards Act. Similar provisions are found in human rights statutes in most of the other jurisdictions: the Alberta Individual's Rights Protection Act; the British Columbia, Newfoundland and Prince Edward Island Human Rights Codes; and the Québec Charter of Human Rights and Freedoms. Under federal jurisdiction, provisions are incorporated in the Canadian Human Rights Act, Equal Wages Guidelines and the Canada Labour Code. In the Northwest Territories, the Fair Practices Act covers the area, and in New Brunswick, equal pay provisions are deemed to be included in the general anti-discrimination sections of the Human Rights Code.

With the adoption of the Pay Equity Act, Manitoba has become the third jurisdiction (with the federal and Québec) to enact equal value legislation.

Federal Legislation

Under the Canadian Human Rights Act, it is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment and performing work of equal value. The criterion applied in assessing the value of work is a composite of the skill, effort and responsibility required in the performance of the work, and the conditions under which the work is performed.

This discriminatory practice is deemed to be prohibited under the Canada Labour Code. Where an inspector designated by the Minister of Labour has reasonable grounds at any time for believing that an employer has maintained differences in wages, the inspector may notify the Canadian Human Rights Commission or file a complaint with the Commission to that effect.

Equal Wages Guidelines have been adopted under the Canadian Human Rights Act to further assess the value of the work performed by employees employed in the same establishment.

To determine if such employees are performing work of equal value, the skill required in the performance of the work is considered to include any type of intellectual or physical skill required in the performance of that work which has been acquired by the employees through experience, training, education or natural ability; the nature and extent of such skills are compared without taking into consideration the means by which they were acquired by the employees.

The effort required in the performance of the work is considered to include any intellectual or physical effort normally required in the performance of that work. Such efforts may be found to be of equal value whether they were exerted by the same or different means, and the assessment of the effort is not affected by the occasional or sporadic performance by that employee of a task that requires additional effort.

The responsibility required in the performance of the work of an employee is assessed by determining the extent to which the employer relies on the employee to perform the work, having regard to the importance of the duties of the employee and the accountability of the employee to the employer for machines, finances and any other resources, and for the work of other employees.

Conditions under which the work of an employee is performed include noise, heat, cold, isolation, physical danger, conditions hazardous to health, mental stress, and any other conditions produced by the physical or psychological work environment, but do not include a requirement to work overtime or on shifts where a premium is paid for such overtime or shift work.

The Equal Wages Guidelines also prescribe a number of factors justifying differences in the wages paid to male and female employees employed in the same establishment who are performing work of equal value.

Provincial Legislation

All provinces and territories, with the exception of New Brunswick, have similar legislation with respect to equal pay for equal work. In New Brunswick, equal pay is deemed to be included in the general anti-discrimination provisions of the Human Rights Code.

General

The legislation prohibits an employer from differentiating in the wages paid to female and male employees performing the same or similar work under the same or similar conditions, and whose jobs require similar skill, effort or responsibility. In most of the provinces, it is specified that similar work has to be done in the same establishment.

All the acts, where applicable, make it clear that a difference in rates of pay based on a factor other than sex does not constitute a failure to comply with their requirements. In Nova Scotia, however, the employer must establish that such a factor justifies a different rate of pay.

In British Columbia, Newfoundland, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory, differences in rates of pay based on a seniority system or a merit system do not constitute discrimination within the terms of the Act. Differences in rates of pay based on a system that measures earnings by quantity or quality of production do not constitute a failure in Ontario, Prince Edward Island, Québec and the Yukon.

In most jurisdictions, no employer is to reduce the wages of a male or female employee in order to comply with the equal pay provisions.

Complaints and Investigation

A number of laws provide that a person claiming to be aggrieved by an alleged contravention of the act has a choice of initiating court proceedings or of making a complaint.

Each act makes it an offence for an employer to discriminate against an employee because he has made a complaint or given evidence under the Act.

Provision is made in all the acts for prosecution in the courts as a last resort. Failure to comply with an act or an order is made an offence punishable by a fine.

The procedure laid down for the enforcement of equal pay provisions may be invoked upon complaint to the director of the commission by the aggrieved person in New Brunswick, Newfoundland and Prince Edward Island. Quebec allows such a complaint to the "Commission des droits de la personne".

A complaint is to be registered in Newfoundland and Prince Edward Island with the Minister of Labour (of Manpower and Industrial Relations in Newfoundland), and in British Columbia, Manitoba, Nova Scotia, Saskatchewan and the Yukon with a designated officer of the Department of Labour. In Alberta, complaints are made to the Human Rights Commission.

In all jurisdictions except Ontario and Nova Scotia, the legislation provides for an initial informal investigation into the complaint, usually by an officer of the Department of Labour.

8. EQUAL PAY

Jurisdiction	Legislation	Act Refers to ...	Equal Work/Value (Criteria)
Federal	Canadian Human Rights Act (s.11) Canada Labour Code (s.38)	Salaries as well as other forms of compensation.	Equal value - skill, responsibility, effort and working conditions
Alberta	Individual's Rights Protection Act (s.6)	Rate of pay	Similar or substantially similar work (6(1)a))
British Columbia	Human Rights Act (s.7)	Rate of pay	Similar or substantially similar - skill, effort, responsibility (s.7(1))
Manitoba	Employment Standards Act, Part IV (s.40)	Wages	Same or substantially the same - job duties, responsibilities, services (s.40(1))
	Human Rights Act - general (s.6)	Any term or condition of employment	
	Pay Equity Act (Applies only to the Public Sector)	Any form of remuneration or benefit for work performed (s.1)	Equal or comparable value - composite of skill, effort, responsibility and working conditions. (ss.1, 6(1))
New Brunswick	Human Rights Act - general discrimination (s.3)	Any terms and conditions of employment	-
Newfoundland	Human Rights Code (s.10)	Wages, benefits	Same or similar work under same or similar working conditions, similar skill, effort, responsibility (s.10(1))

Jurisdiction	Legislation	Act Refers to ...	Equal Work/Value (Criteria)
Nova Scotia	Labour Standards Code (s.55) Human Rights Act - general discrimination (s.11)	Wages	Substantially the same work, in the same establishment, substantially equal skill, responsibility, effort, working conditions (s.55)
Ontario	Employment Standards Act (s.33)	Rate of pay	Substantially the same work requiring substantially same skill, responsibility, effort, working conditions (s.33).
	Human Rights Code - general discrimination (s.4)	Employment	-
Prince Edward Island	Human Rights Act (s.7)	Rate of pay	Substantially the same work, requiring equal education, skill, experience, effort, responsbility, working conditions (s.7(1)
Québec	Charter of Human Rights and Freedoms (s.19)	Wages	Equivalent work (i.e. work of equal value) (s.19)
Saskatchewan	Labour Standards Act, Part III (s.17)	Rate of pay	Similar work, similar skill, responsibility, effort, working conditions (17(1))
Northwest Territories	Fair Practices Act (s.6)	Rate of pay	Similar or substantially similar work, job duties or services (6(2))
Yukon	Employment Standards Act (s.43)	Rate of pay	Similar work under similar conditions, skill, effort, responsibility (s.43)

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages - Time Limit or Monetary
Federal	Different performance ratings, seniority, red circling, rehabilitation assignments, demotion-pay procedure, phased-in wage reductions, temporary training, labour shortage, change in work performed (guidelines)	Complainant initiates an investigation; settlement may be attempted at all stages; the Commission may appoint a conciliator. If there is no settlement, a human rights tribunal may be appointed. Failure to comply with the tribunal's decision is an offence punishable by fine. The decision may be appealed to a court. (ss.31 and fn.)	No monetary limit, limitation period of 2 years prior to complaint.
Alberta	Any factor other than sex if the factor normally justifies a difference	Complaint referred from officer to supervisor to assistant director may be heard by Human Rights Commission (s.20), board of inquiry and Supreme Court of Alberta (s.33).	Recovery of wages restricted to 12-month period prior to termination or commencement of proceedings (s.6(6)(c))
British Columbia	Seniority, merit, or systems which measure quantity or quality of production s.7(2); factor other than sex, s.7(3)	Investigations proceed to board of inquiry if no settlement proceed to Supreme Court of B.C.	Recovery of wages restricted to 12-month period prior to termination or commencement of proceedings (s.7(5)(a))
Manitoba	"factors other than sex" in opinion of wages board, s.40(3)	Investigation made, if pay refused then collection is made under Payment of Wage Act. May proceed to Labour Board and county courts.	Wages may be recovered for only 1 year prior to the date of information and complaint (s.14(4))

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages - Time Limit or Monetary
Manitoba (Continued)	According to the Pay Equity Act, comparisons are made only between male-dominated and female-dominated classes of employees, which are usually composed of 70% or more employees of the same sex. Because exact allocation of pay equity wage adjustments must be negotiated, any factor may be considered. (s.1, 8, 9, 13, 14)	Management and labour are responsible for the development or selection, and application of a job-evaluation system. They must also reach a subsequent agreement respecting the exact allocation of the pay equity wage adjustments. Should parties fail to reach the required agreements in the time prescribed, impasses will be resolved by an arbitration board for the Civil Service and by the Manitoba Labour Board for Crown entities and external agencies. (s.8, 9, 10, 13, 14, 15)	Pay equity wage adjustments will have begun being made no later than September 30, 1987 in the Civil Service and no later than September 30, 1988 in Crown entities and external agencies. Wage adjustments may be limited to 1% of the government's total payroll per year, over a period of four years. (s.7(3), 9(1)c), 13(1)c))
New Brunswick	"Bona fide" occupational qualifications as decided by Commission	Investigation; Commission will decide settlement and attempt conciliation. May be appealed to board of inquiry. Failure to comply constitutes a summary conviction offence. (ss. 19 and fn)	None
Newfoundland	Seniority s.10(1)(a) Merit s.10(1)(b)	Complaint made to director may be referred to the Minister. The Minister may refer to a Commission. Appeal to courts available.	None

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages - Time Limit or Monetary
Nova Scotia	"Factor other than sex" s.55(2)	Complaint made to director and investigation is made. A settlement can be attempted. If no settlement is reached the case will be referred to a tribunal with appeal to court. (s.57)	None
Ontario	Seniority system s.33(a); Merit system s.33(b); Quantity or quality of production s.33(c); any "Factor other than sex" s.33(d)	The employment standards officer investigates and decides the case. The director has discretion to review or appeal decision (s.33(4)); there is a general penalty provision; contravention is a summary offence; there is also a civil remedy.	Assessment by employment standard officer limited to $4 000. No restriction if assessed by Provincial Court. Limitation - 2 years from time director received notice (ss.47, 63)
Prince Edward Island	Senority s.7(a); Merit s.7(b); Quantity or quality of production or performance s.7(c); Factors may not be based on discrimination.	Complaint proceeds to Commission and Board of inquiry. May be appealed to Supreme Court.	Supreme Court restricted to 12 months prior to commencement of proceedings or termination. Human Rights Commission: no restriction (s.7(4))
Quebec	Seniority, years of service, merit, productivity or overtime not discriminatory if criteria common to all members (s.19)	The Commission tries to conciliate; it then makes recommendations. There is an appeal to court under the Summary Convictions Act. (ss.81 and fn.)	None

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages - Time Limit or Monetary
Saskatchewan	Seniority, merit s.17(1)	The Director of Labour Standards appoints an officer to investigate the case and try to effect a settlement (s.18). If no settlement is reached a Human Rights Commission will make a formal inquiry. Failure to comply with the decision is a summary conviction offence. The decision may be appealed in court. (ss.19 to 22)	No monetary restriction, wages assessed from time violation occurred.
Northwest Territories	"Factor other than sex" s.6(3)	Complaint made; an officer is appointed by the Commission (s.7). If there is no settlement the complaint will proceed before the Commission. There is an appeal to the Supreme Court (s.8).	None
Yukon	Seniority (s.43(1)a)); Merit (s.43(1)b); Quantity of quality of production (s.43(1)c)); Factor other than sex (s.43(1)d))	The Director of Labour Standards can determine the amount of unpaid wages. (s.46) If the Director can't resolve the complaint, he may refer it to the Board. The Labour Standards Board will investigate. There is a right of appeal to the Supreme Court. (ss.73, 74, 77(5), 94)	Recovery of wages restricted to one year after the date the payment of wages owing was to be made. (s.70(1)a))

MATERNITY PROTECTION

Legislation to ensure the health and job security of women working before and after childbirth is in force in the federal jurisdiction and in all the provinces. Only the Northwest Territories have no maternity leave provisions.

The federal maternity leave provisions are contained in the Canada Labour Code, Part III, Division V.1. The Alberta Employment Standards Act, Part 3, Divison 7 covers this subject. Part 7 of the Employment Standards Act in British Columbia deals with maternity provisions. The Manitoba provisions are contained in Subsection 34.1 of the Employment Standards Act. The New Brunswick provisions are Sections 42 to 44 of the Employment Standards Act. The Newfoundland Labour Standards Act covers maternity protection. Nova Scotia provisions are contained in sections 56 and 57 of the Labour Standards Code. The Ontario maternity protection provisions form Part XI of the Employment Standards Act, 1974. The Prince Edward Island provisions are contained in Sections 67.1 to 67.5 of the Labour Act. In Québec, a regulation made pursuant to An Act Respecting Labour Standards contains maternity protection provisions. Saskatchewan's provisions are contained in Part IV of the Labour Standards Act. The Yukon's consist of Part 6 of the Employment Standards Act.

All the federal and provincial legislation provide for a period of leave, which varies from 17 to 41 weeks. In most provinces, an employee is entitled to maternity leave if she has been continuously employed by her employer for at least one year. All laws also require an employee to provide a medical certificate. Provisions are also made for exclusions and job security.

These provisions are shown in more detail in the tables below.

Paternity and Adoption Leave

Five provinces -- Manitoba, Nova Scotia, Prince Edward Island, Québec and Saskatchewan -- have legislation dealing with paternity and/or adoption leave. In addition, the federal jurisdiction offers a child care leave which may be used as paternity or adoption leave.

In the federal jurisdiction, the child care leave consisting of a maximum of 24 weeks may be used as adoption leave or paternity leave. It may also serve to lengthen the natural mother's maternity leave to a total of 41 weeks. The leave is available to either parent, whether natural or adoptive, and may be shared in such a way that the aggregate period of leave does not exceed 24 weeks.

The Employment Standards Act in Manitoba provides paternity and adoption leave. The paternity leave consists of a continuous leave of up to six weeks and the adoption leave consists of a continuous leave of up to 17 weeks. To be eligible for either leave, an employee must have completed 12 consecutive months of employment for an employer and have submitted an application for leave at least four weeks in advance. The leave may begin: on the day the child comes into the employee's actual care or custody; at any time during, or at the expiry of any leave of absence taken under this Act, an act of Parliament or any other Legislature, or any collective agreement, by another person in respect of the child; or at any time during the 90 days immediately following the day on which the child is born or came into the employee's actual care and custody. In the case of the paternity leave, the leave may also, of course, begin on the day the child is born.

The Labour Standards Code in Nova Scotia requires an employer to grant an employee a leave of absence for the week in which the adoptive child comes into full care of the employee, and up to four additional weeks. The employer must grant this leave upon request of a female employee and receipt of a certificate from the Minister of Social Services stating that a notice of proposed adoption of a child five years or younger has been filed.

Under a provision of the Prince Edward Island Labour Act, a female employee may request leave of absence without pay for the purpose of adoption of a child six years of age or younger. The leave may be for one week, or up to five weeks, as requested, beginning the week in which the adoptive child is placed in the care of the employee. The employee must provide the employer with a notice from the director of child welfare or from a child welfare agency of the proposed placement of a child.

In Québec, an Act Respecting Labour Standards states that an employee may be absent from work, without pay, for two days at the birth or adoption of a child.

Upon written application, the Saskatchewan Labour Standards Act provides that an employee who has worked for a continuous period of at least 12 months is entitled to adoption or paternity leave. Paternity leave consists of a period of not more than six weeks to be taken in any combination during the three month period before or after the estimated date of birth. Leave for adoption consists of a period of not more than six weeks commencing on the day the child becomes available for adoption.

The employee must notify the employer at least 14 days before returning to work. An employee who resumes work after leave must be reinstated in the position occupied before the leave or a comparable position with not less than the same wages and benefits.

9. MATERNITY PROTECTION AND PARENTAL LEAVE*

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Federal Canada Labour Code	If confinement occurs on or before date specified in certificate: 17 weeks. If confinement occurs after the date specified in certificate: 17 weeks + period equal to the period between date specified in certificate and actual date of delivery. Leave may commence no earlier than 11 weeks before expected date of birth and must end no later than 17 weeks following actual date of birth. An additional 24 weeks of child care leave is available to either parent, whether natural or adoptive.	6 months of continuous service; application 4 weeks before commencement of leave or to change the length of the leave; medical certificate.	Work, undertaking or business of a local or private nature in Yukon or Northwest Territories.	No dismissal, suspension, lay off, demotion or other disciplinary measure because of pregnancy or application for leave. Employee's pregnancy or intention to take child care leave not to be taken into account in any decision regarding training or promotion. Reinstatement in same position or comparable with not less than same wages and benefits and in the same location as the previous position. Employee has the right to receive employment information during absence.	Pension, health and disability benefits and seniority continue to accrue during the entire period of leave. However, if a monetary contribution is required of the employee with regard to a benefit and he or she fails to pay it, pre- and post-leave employment is deemed continuous for the purpose of calculating the pension, health and disability benefits. Employment

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*Yukon and the Northwest Territories have no legislated provisions on maternity leave.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Federal Canada Labour Code (continued)					deemed continuous where business transferred from one employer to another. The 24 weeks child care leave may be used as adoption or paternity leave. The leave is available to either parent and may be shared by both in such a way as the aggregate period of leave totals no more than 24 weeks.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Alberta Employment Standards Act Individual's Rights Protection Act	18 weeks Pre-natal: 12 weeks Post-natal: at least 6 weeks; 3 weeks longer where recommended in medical certificate.	1 year of continuous service; notice 2 weeks before commencement of leave; medical certificate, if required by the employer.	Farm labourers, domestic servants, and municipal police and public employees.	An employer cannot terminate or lay off an employee who has commenced maternity leave. Reinstatement in same position or comparable with not less than same wages and benefits. Employee must give 2 weeks' notice of date of resumption of employment. An employer cannot refuse to continue to employ an employee or discriminate against her in any term or condition of employment for the only reason that she is pregnant.	Employer may require employee to commence maternity leave (within the entitled period of leave) where pregnancy interferes with performance of duties.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
British Columbia Employment Standards Act and Regulation	18 weeks Pre-natal: 11 weeks Post-natal: 6 weeks up to 6 weeks longer where recommended in medical certificate.	Medical certificate	Specified professionals; certain categories of salespersons; students in certain approved work programs; students employed at school where they are enrolled; persons employed in a private residence solely to attend to a child, a disabled, infirm or other person; persons receiving income assistance while participating in an employment program; artists, musicians, performers or actors; student nurses	No notice or dismissal because of authorized leave or reasons arising out of it. Onus of proof on employer.	Pre- and post-leave employment deemed continuous for pensions and other benefits. Employer may require employee to commence maternity leave (within the entitled period of leave) where pregnancy interferes with performance of duties. If employer suspends or discontinues operations during employee's leave of absence and operations have not

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
British Columbia (continued)			and disabled employees of a charity receiving therapy or engaged in a therapeutic work program.		resumed at the time that the leave expires, the employment of that employee is deemed continuous upon resumption of operations.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Manitoba Employment Standards Act	If delivery occurs on or before date specified in certificate: 17 weeks. If delivery occurs after date mentioned in certificate: 17 weeks + period equal to period between date specified in certificate and actual date of delivery. Leave must commence no earlier than 11 weeks preceding the date specified in the certificate and must terminate no later than 17 weeks following actual date of delivery. Special: (where no application made) with medical certificate that employee is incapable of performing duties because of medical condition arising out of pregnancy: 11 weeks pre-natal leave and a further period. Total leave must not exceed 17 weeks.	1 year of continuous service; application 4 weeks before commencement of leave; medical certificate.		Employer may not dismiss or lay off an employee who has completed 12 months of continuous employment solely because of pregnancy or application for leave. Reinstatement in same position or comparable with not less than same wages and benefits.	Pre- and post-leave employment deemed continuous for pensions and other benefits. Employment deemed continuous where business transferred. A paternity leave of up to 6 weeks or an adoption leave of a maximum of 17 weeks are also available. Either leave may be taken concurrently or following a female employee's leave of absence with respect to a child, awarded under this Act, any act of Parliament

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Manitoba Employment Standards Act (continued)					or of any other Legislature, or under any collective agreement. The leave may also begin at any time within 90 days following the birth of the child, in the case of paternity leave, or within 90 days following the day on which the child comes into the employee's actual care and custody, in the case of adoption leave.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
New Brunswick Employment Standards Act	17 weeks. Pre-natal leave: up to 11 weeks prior to the estimated date of birth.	Medical certificate; notice of 4 months of the intention to take the leave; notice of 2 weeks prior to the date from which the leave is to begin, unless there is an emergency.	Domestics; farm workers.	Employer may not dismiss, suspend or lay off a pregnant employee or refuse to hire a pregnant employee for reasons arising out of the pregnancy alone. The employee must be reinstated in the same position or a comparable one, with not less than the same wages nor loss of seniority or benefits accrued up to the beginning of the leave.	Employer may require that an employee begin her leave at any time during the 11 weeks preceding the estimated date of birth if she cannot reasonably perform the duties of her position and if no other position is available.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Newfoundland Labour Standards Act	17 weeks. Pre-natal: 11 weeks + period between estimated and actual date of birth. Post-natal: 6 weeks. Either or both periods may be reduced by consent and with medical certificate. Either or both periods may be increased by consent.	1 year of continuous service; medical certificate, notification to her employer of the estimated date of birth not later than 15 weeks before leave.	Domestic servants.	No dismiss because leave permitted by the Act is taken. In case of dismissal, onus of proof is on employer. Terms of contract of service are so resumed that conditions are not less beneficial.	Pre- and post-leave employment deemed continuous for pensions and other benefits.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Nova Scotia Labour Standards Code	17 weeks. Pre-natal: At any time from 11 weeks before expected delivery. Compulsory at any time on request of employer where duties cannot reasonablybe performed by pregnant women or performance materially affected by pregnancy. Post-natal: 6 weeks compulsory; shorter period on opinion of doctor.	1 year's service; medical certificate.	Domestic servants in private home, professionals, students engaged in professional training and teachers.	No dismissal because of pregnancy of an employee who is entitled to leave. Reinstatement with no loss of seniority or benefits.	Adoption leave up to 5 weeks may be granted to a female employee on receipt of a certificate.
Ontario Employment Standards Act, 1974	17 weeks minimum. Pre-natal: voluntary 11 weeks before expected date or actual delivery. Employer may require employee to commence leave where duties cannot reasonably be performed by pregnant women or performance materially affected by pregnancy. Post-natal: 6 weeks, shorter period with medical certificate and one week's notice to employer.	Employed 1 year and 11 weeks immediately preceding expected date of delivery; medical certificate with 2 weeks' notice.	Students in certain approved work programs, inmates of provincial correctional institutions, offenders performing work under court orders.	Termination or lay-off of employee entitled to leave is prohibited. Reinstatement at same wages and without loss of seniority or benefits accrued in same position or comparable work.	

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Prince Edward Island Labour Act	Seventeen weeks. Pre-natal: 11 weeks before the estimated date of birth. Post-natal: not less than six weeks after the actual date of birth, or a shorter period if the employee so requests.	Employed for 12 continuous months or more; application at least 4 weeks before the commencement of leave; medical certificate.	Farm labourers	Employer may not dismiss, lay off or suspend an employee by reason only of the fact that she is pregnant, is temporarily disabled because of pregnancy or has applied for maternity leave. Reinstatement in same position or in a comparable one with not less than the same wages and benefits. The employer is, however, not obliged to pay pension benefits in respect of any period maternity leave granted to an employee.	Adoption leave of up to six weeks may be granted to a female employee on receipt of a notice from the Director of Child Welfare or from a child welfare agency proposed placement of a child six years of age or younger. The employer may request that an employee begin her leave not more than three months before the estimated date of birth where the pregnancy would unreasonably interfere with the performance of her duties, and the onus of proof is on the employer.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Québec An Act Respecting Labour Standards and Regulations.	18 weeks maximum. The leave may be divided at the employee's discretion before and after the expected date of birth; the leave may start only as of the beginning of the 16th week preceding the expected date of birth. If birth takes place after the expected date, the leave can be extended by a period equal to the period of delay, but not if the employee still has 2 weeks post-natal from the original leave. Maternity leave can can be extended on medical certificate up to 6 weeks.	20 weeks of service for the same employer during the last 12 months. Notice: 3 weeks before commencement of leave; medical certificate.	Farm employees where no more than 3 employees are habitually employed, employees employed in a dwelling to care for a child or a disabled, handicapped or aged person, a student employed in a job induction program.	Employer must reinstate the employee in her former position with all rights and benefits. Employee must give 2 weeks' notice of date of resumption of employment, if she has decided to shorten her leave from the date specified in the notice to her employer of the expected date of return. An employee who does not return to work at the end of her maternity leave is presumed to have resigned. Dismissal, suspension or transfer of any employee because of pregnancy is prohibited.	Upon presentation of medical certificate, the employee may request to work at other tasks if the conditions of work are hazardous to her or the unborn child, or to the child she is breast-feeding. If the request is, not granted the employee may cease work immediately without loss of rights or benefits. The employee may not be required to recommence work until either she is reassigned or the delivery has occurred.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Québec (continued)					The employee's job must be kept available for her upon her return from leave. As of the 6th week preceding the expected date of birth, the employer may require the pregnant employee to produce a medical certificate. An employee may be absent from work, without pay, for 2 days at the birth or adoption of a child.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Saskatchewan Labour Standards Act	18 weeks. Pre-natal: 12 weeks. Post-natal: 6 weeks. Shorter period with permission of employer. A further 6 weeks with medical certificate giving bona fide reasons why employee is unable to return to work. Employer may require that employee commence maternity leave not more than 3 months before expected date of birth where pregnancy would interfere with performance of duties. Special: (where no application made) total leave: 14 weeks; not less than 6 weeks after birth.	1 year of continuous service; application 4 weeks before commencement; medical certificate.	Farming, ranching or market gardening.	No dismissal, lay-off suspension or discrimination solely because of pregnancy or application for leave. Onus of proof is on employer. Reinstatement in same or comparable position with no less than the same wages and benefits.	14 days notice of intention of resuming work to be given to employer. Upon written application, an employee who has worked continuously for 12 months is entitled to: (a) Paternity leave: 6 weeks maximum to be taken in any combination during 3 month period before or after estimated date of birth.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Saskatchewan (continued)					(b) Adoption leave: 6 weeks maximum commencing on day child becomes available for adoption. 14 days notice before returning to work. Reinstatement in same position or comparable with not less than same wages and benefits.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Yukon Employment Standards Act	17 weeks.	12 months of continuous employment; written request for leave at least 4 weeks in advance; medical certificate.	Sitters; persons receiving supplemental benefits under s.38.1 of the Unemployment Insurance Act, 1971.	No termination or change in the conditions of employment because of leave or because of pregnancy. Reinstatement in the same or comparable position with no less than the wages and benefits accrued. Employee is entitled to increments in wages and benefits awarded during her absence.	Employer may request that an employee begin her leave at any time during the period of 6 weeks preceding the expected date of delivery or sooner, with the consent of the Director, if the employee cannot reasonably perform her duties because of the pregnancy.

HOURS OF WORK

Federal

Hours of work of employees in undertakings within the federal jurisdiction are regulated by the Canada Labour Code, Part III, Division I.

The Code sets a standard workday and workweek and requires payment of an overtime rate for work done beyond the hours specified. It also establishes a maximum workweek, overtime hours being restricted to eight in a week, except in special circumstances.

Under the Code, standard hours (the number of hours that may be worked at regular rates of pay) are limited to eight in a day and 40 in a week. Hours in excess of eight and 40 may be worked, however, provided one and one-half times the regular rate is paid, up to a maximum of 48 hours in a week.

In a week in which an employee is entitled to a general holiday with pay (under Part III, Division I of the Code) the overtime rate is to be paid after 32 hours, instead of 40. In calculating overtime for the week, no account is to be taken of any time worked on the holiday.

Because some types of employment may call for a more flexible arrangement of working hours, the Code permits the averaging of hours over a period of two or more weeks. Under a system of averaging, working hours may vary from day to day or from week to week, so long as the total standard hours do not exceed 40 multiplied by the number of weeks in the averaging period. The overtime rate (one and one-half times the regular rate) must be paid at the end of the averaging period for all hours worked in excess of such standard hours. The total number of hours that may be worked by an employee in an averaging period is 48 multiplied by the number of weeks in the period.

Averaging is permitted for any class of employees who have no regularly scheduled working hours or who have regular hours but the number of hours scheduled differs from time to time. On notifying the Department of Labour, an employer may select an averaging period of 13 weeks or less.

If an employer requires a longer period for averaging than 13 weeks in order to provide for a period in which fluctuations take place (e.g., where there are seasonal rush and slack periods during the year), he or she must obtain the approval of the Minister of Labour. The same conditions apply as to a period of 13 weeks or less. The period over which hours may be averaged may be as long as a full year.

An employer who has adopted an averaging plan is required to post clear information about the plan in places where it can readily be seen by the employees affected.

When an employee voluntarily terminates employment during an averaging period, he or she is paid his regular rate for the hours worked but is not entitled to overtime pay. If this employment is terminated by the employer, however, the employee must be paid overtime pay for any hours worked in excess of an average 40-hour week over the period worked.

Any employer, whether or not the employees normally work irregular hours, may apply for a ministerial permit which increases the standard and maximum hours in a week, provided that over such period of weeks as are stated in the permit, the average standard hours do not exceed 40 per week and the average maximum hours do not exceed 48 per week.

The Minister of Labour may not issue the permit unless satisfied that the arrangements specified in the permit are supported by the employer and by either at least eighty per cent of the employees or, where a collective agreement is in effect, the bargaining agent of the employees. The Minister may cancel the permit on the application of both parties to a collective agrement. Where the employees are not subject to a collective agremeent, the Minister may cancel the permit if he or she judges that to do so would be in the best interests of the employees, and the employer may do so by giving 30 days' notice to the Minister. The same notice must also be given to the employees by posting a notice in a place where the employees are likely to see it.

Exceptions to the maximum workweek are permitted in certain circumstances. Work in excess of 48 hours in a week (or the maximum hours established in an averaging period) may be allowed under permit when the Minister, having given due regard to the conditions of employment and the welfare of the employees, is satisfied that such exceptional conditions exist as to make the working of additional hours necessary.

A permit is issued for a definite period of no longer duration than the time the exceptional circumstances are expected to continue. The permit may specify either the total amount of excess overtime that may be worked in the period or the additional number of hours per day or per week that the employees may work. The number of employees engaged in such excess overtime and the extent of the overtime worked by each must be reported in writing to the Minister by the employer within 15 days after the overtime permit expires or within a time fixed in the permit.

Maximum weekly hours may also be exceeded to make up for the time lost due to an accident, breakdown in machinery or other emergency. The employer is required to report such emergency work within a specified time.

In order to deal with the special problems of some industries, regulations may be made, after public inquiry, varying the standard and maximum hours for classes of employees in any specified establishment where the Code's provisions would be unduly prejudicial to the interests of the employees or seriously detrimental to the operation of the establishment, or entirely exempting a class of employees from the hours provisions where they cannot reasonably be applied.

Regulations may also be made specifying the circumstances under which the overtime rate will not apply because work practices make it unreasonable or inequitable. A general regulation issued under the Canada Labour Code provides for exemption from the overtime provisions in circumstances where there is an established work practice that requires or permits an employee to work in excess of standard hours for the purpose of changing shifts, or permits an employee to exercise seniority rights to work in excess of standard hours pursuant to a collective agreement.

Different hours of work provisions have been established for some categories of employees such as East and West Coast shipping employees, country elevator agents and managers, motor vehicle operators, commission sales persons in the broadcasting industry, certain uranium mining and refining employees, certain employees of railways, etc.

Provincial

General Hours of Work Laws

The Employment Standards Act in Alberta sets standard hours of work at eight in a day or 44 in a week. The maximum hours of work of an employee must be confined within 12 hours in a day except in the case of accident, or if the director of employment standards issues a permit or a regulation is made permitting extended hours of work.

Hours worked in excess of the standard hours must be compensated at one and one-half times the regular rate. In lieu of overtime pay, an employee may agree to take time off, at a rate of one and one-half times the overtime hours worked. General holidays are not taken into account in computing overtime.

Standard hours of certain categories of employees are established by regulation. (See Table 10.)

The Employment Standards Act in British Columbia states that an employer may not require an employee to work in excess of eight hours in a day or 40 in a week unless the employer complies with the overtime provisions of the Employment Standards Act. Hours worked in excess of eight in a day or 40 in a week must be remunerated at one and one-half times the regular rate, and additional hours in excess of 11 in a day or 48 in a week must be remunerated at two times the regular rate.

Where an employment standards officer is satisfied that the hours of work of an employee in excess of eight in a day or 40 in a week are excessive or are detrimental to the employee's health or safety, the director may order the hours of work limited to eight in a day or 40 in a week. If the hours of work are averaged over a period longer than a week, or if less than five days are worked in a week, or if the basis of calculation of overtime wages is the subject of an agreement between the employer and his employees or their representatives, the director may authorize a variation of the overtime provisions of the Act, provided that the conditions of employment and overtime wages established by the modification are not inconsistent with the intent of the Act.

Both standard and maximum hours of work are set at eight in a day and 40 in a week by the Employment Standards Act in Manitoba. The Manitoba Labour Board is empowered to vary these hours where the employer wishes to establish a workweek of less than five days, in order to facilitate shift work, provided that the average hours worked calculated over such period as prescribed by the Board, or where in the opinion of the Board, the hours prescribed by the Act are not feasible or reasonable for a particular industry.

Employees may be required to work overtime where work is urgently required to maintain or repair equipment or plant, in the event of an occurrence beyond human control which affects the life, health or safety of individuals or which interrupts the provision of an essential service.

Where an employee is required to work overtime, he is entitled to be paid at one and one-half times his regular rate, unless the Lieutenant-Governor-in-Council declares a state of emergency, civil disaster or war emergency. Certain occupational exclusions are listed in Table 10.

Under the Employment Standards Act in Ontario, maximum hours of work are eight in a day and 48 in a week. The maximum may be exceeded in cases of accident or where work is urgently required to avoid serious interference with the ordinary working of the establishment.

The director of employment standards may, by permit, authorize hours of work in excess of the maximum, subject to the limits prescribed by the Act. The limit for excess hours is 12 hours in a week for engineers, firemen, full-time maintenance personnel, receivers, shippers, truck drivers and their helpers, watchmen or any person who, in the opinion of the director, is engaged in a similar occupation. For all other employees, the limit for each employee is 100 hours in each year.

The director may also issue a permit authorizing working hours in excess of the limits set out above, if satisfied that the nature of the work or the perishable nature of the raw material being processed requires the excess hours. The issuance of a permit does not require the employee to work in excess of the normal maximum hours of eight in a day or 48 in a week.

Overtime pay at a rate of one and one-half times the regular rate must be paid for hours worked in excess of 44 in a week. In certain industries -- local cartage, highway transport, road building, sewer and watermain construction, the hotel, motel, tourist resort, tavern and restaurant industries (seasonal employees) and fresh fruit and vegetable processing (seasonal employees) — extended hours may be worked before the overtime rate applies. (See Table 10 for particulars.)

Under the Labour Standards Act in Saskatchewan, standard hours are set at eight in a day and 40 in a week. Hours worked in excess of the standard hours of work must be compensated at one and one-half times the regular rate. The act provides for the adoption of ten-hour days in a four-day week, if authorized by the Department of Labour or the trade union which represents the employees, without the necessity of paying overtime rates. Averaging of hours over a period of weeks is also permitted, with the authorization of the Department of Labour or the trade union which represents the employees.

Where a public holiday occurs during a workweek or during an averaging period, the total time required to be worked before overtime rates are payable is reduced by eight hours. Special provisions with respect to overtime are in effect for certain employees of city newspapers, where averaging of hours worked is permitted over a two-week period, and oil truck drivers, where averaging takes place over one year.

Notwithstanding anything otherwise provided in the Act, no employer may require an employee to work more than 44 hours in one week, or, where a public holiday occurs during the week, 36 hours in that week, except in the case of emergency circumstances.

In New Brunswick, the maximum number of hours an employer may require an employee to work before paying him the overtime rate may be prescribed by regulations. As of yet, however, no such regulation has been adopted. Moreover, there are few limits on the number of hours an employee may work during a day, a week or a month. Any provincial act may limit the number of hours of work.

In Newfoundland, the Labour Standards Regulations provide for standard hours of eight in a day and 40 in a week for assistants (shop employees) and 44 in a week for other employees. Pursuant to the regulations, overtime wages shall be paid at one and one-half times the minimum rate for hours worked in excess of eight hours in a day and 40 in a week to a shop employee, and 44 hours in a week to other employees. Overtime provisions do not apply to persons engaged in domestic service in a private home, or those employed in planting, cultivating and harvesting farm produce other than the production of fruit and vegetables in greenhouse and nursery operations, and raising livestock and poultry.

In Nova Scotia, the Labour Standards Code permits the making of regulations to limit the number of hours per day or per week during which an employee may work. If such regulations are made, they may be varied by agreement between the employer and representatives of the employees. The limits of the hours of work may be exceeded in case of accident or emergency.

To date, maximum hours of work regulations have not been made. Instead, Nova Scotia regulates the hours during which the minimum wage may be paid. The limit established by the General Minimum Wage Order is 48 in a week, after which at least one and one-half times the minimum wage must be paid. Special rates and, in some cases, hours of work after which premium rates apply, have been made applicable to beauty parlor employees, workers in the logging and forest operations industry, road building and heavy construction workers and certain building construction workers in Halifax, Dartmouth, and Sydney.

In Prince Edward Island, the Minimum Wage Order No. 1/85, which revokes and replaces all previous orders effective October 1, 1985, establishes a standard workweek of 48 hours beyond which overtime rates are payable at one and one-half times the minimum rate. This order does not apply to registered apprentices, farm labourers who are not engaged in commercial undertakings, persons employed for the sole purpose of protecting and caring for children, handicapped or aged persons in private homes, and employees of non-profit organizations who are required to live in. Ambulance drivers are entitled to overtime pay only in respect of the first 12 hours of overtime per week.

The Act Respecting Labour Standards establishes a standard workweek of 44 hours in Québec. There is no standard workday. An employer is entitled to stagger hours of work on a basis other than a weekly basis with the permission of the Labour Standards Commission, provided that the average number of hours worked does not exceed the standard set in the act (or regulations, in the case of certain categories of employees). The Act permits regulations to be made establishing a different standard workweek for specified groups. (See Table 10 for a list of these workweeks. Table 10 also contains a list of employees who are excluded from any hours of work provisions.)

Overtime is calculated at a rate of one and one-half times the regular rate of pay for all hours worked in excess of the standard workweek. Any annual leave days or statutory holidays with pay are counted as hours worked for the purpose of computing overtime.

The mining safety acts of both territories provide for a maximum eight-hour day for work below ground in mines.

Under the Labour Standards Act of the Northwest Territories, standard hours of work are eight in a day and 44 in a week for most employees. Except in special circumstances, maximum hours are 10 in a day and 54 in a week.

Different standards are laid down for certain classes of employees. Standard hours of 176 in four consecutive weeks have been established for persons employed in exploration and development of metal mining and petroleum (including geophysical, geological, seismological and diamond drilling work), the transport of goods to and from isolated areas, and in tourist camps. For these employees, maximum hours are 216 in the same period.

In the Yukon Territory, standard hours are eight in a day and 40 in a week. Maximum hours of work permitted are ten in a day, 60 in a week and 260 in a month. Overtime beyond the limits of eight and 40 hours is prohibited for employees engaged in mining operations underground in a shaft or tunnel.

In both the Northwest Territories and the Yukon Territory, an employee who is required or permitted to work in excess of standard hours must be paid one and one-half times his regular rate.

Averaging of hours over a period of two or more weeks is permitted in both territories. The manner and circumstances in which averaging may be allowed are to be prescribed by regulations.

Exceptions to maximum hours standards are permitted in certain circumstances in the Yukon Territory. Where work in an industrial establishment is seasonal or intermittent in nature, the commissioner, after having considered the nature of the establishment, the conditions of employment and the welfare of the employees, may issue an order permitting excess hours to be worked.

In the Northwest Territories, hours in excess of maximum hours (10 and 54 or 216, as the case may be) may be worked with a permit issued by the labour standards officer, when the applicant has satisfied him that there are exceptional circumstances to justify the working of additional hours, or where the nature of the work is seasonal or intermittent.

The hours of work provisions of the Yukon Act do not apply to members of the employer's family, individuals who search for minerals, travelling salesmen, and supervisory and managerial employees. Members and students of professions, guides or outfitters, watchmen or caretakers, farm workers, domestics and persons receiving a supplement to benefits in accordance with section 38.1 of the Unemployment Insurance Act, 1971.

Persons employed as hunting or fishing guides, domestic servants, students and members of designated professions, and persons exercising supervisory and managerial functions are exempted from the hours of work provisions of the Northwest Territories Act.

The standards set under hours of work laws and orders are set out in Table 10.

Other Legislation Restricting Hours

Apart from general hours of work laws, other statutes regulate working hours in some industries.

Schedules under industrial standards legislation in seven provinces, and decrees under the Québec Collective Agreement Decrees Act and the Construction Industry Labour Relations Act, and under the Manitoba Construction Industry Wages Act regulate hours in construction and other industries. Schedules and decrees apply to designated zones or industries; a number apply throughout the province.

Ontario has legislation establishing maximum hours of work on certain work done in the performance of a contract with the provincial government.

Generally speaking, standard weekly hours for the construction industry range from 40 to 48, with a 40-hour week being the usual standard in the larger centres. In Québec, a 40-hour week is set for tradesmen, a 42 1/2-hour week for labourers and a 50-hour week for road building and excavation work.

In another industry regulated by schedules and decrees in Ontario and Québec, the garment industry, some standard weekly hours are 36 or 37 1/2. In most branches of the industry, standard hours have been reduced to 35.

In Manitoba, maximum hours which may be worked at regular rates are set under the Construction Industry Wages Act, which applies to both private and public construction work. At present an eight-hour day and a 40-hour week is in effect for most classifications of construction work in the Greater Winnipeg area, Brandon, Portage LaPrairie and Northern Manitoba, and a 44-hour week in the rest of the province. In the heavy construction industry, the maximum hours of work payable at regular rates are 52 except in Metropolitan Winnipeg during the period from November 1 to April 30, when a 48-hour week is in effect.

In all provinces except Manitoba, Ontario and Saskatchewan, there is also some indirect regulation of hours by virtue of provisions in minimum wage orders requiring the payment of an overtime rate after a specified number of hours of work.

Meal Breaks and Coffee Breaks

British Columbia, Ontario, the Northwest Territories and the Yukon provide that an employee is entitled to a meal break of at least one-half hour after each period of five consecutive hours of work. Manitoba awards to employees a meal break of one hour after five consecutive hours of work. However, the Manitoba Labour Board may authorize entitlement to a shorter period. In addition, parties to a collective agreement may agree to a shorter period. In Newfoundland, wholesale and retail workers are entitled to a meal break of one hour after each period of five consecutive hours of work. Other employers are entitled to only one-half hour. In Saskatchewan, only employees whose salary does not exceed 25% more than the minimum wage rate are entitled to a meal break. It consists of a period of one hour, except where the employer provides meals to his employees at a cost of no more than one third the minimum wage rate. In such a case, the meal break is for a period of one-half hour.

Moreover, Ontario, Québec and Saskatchewan provide that, where employers allow them, time spent on coffee breaks is deemed to be time worked for the purposes of calculating an employee's salary.

Employment of Children

Legislation concerning the employment of children usually restricts the hours during which children may work and the maximum hours of work per day or week. For details, we refer the reader to the chapter dealing with employment of children contained in this book.

10. GENERAL HOURS OF WORK AND OVERTIME RATES*

Federal - (Canada Labour Code and Regulation)

Hours of Work:

Standard: 8 in a day
40 in a week

Maximum: 48 in a week

Exclusions from provisions concerning both hours of work and overtime: managers, superintendents and certain professional employees

Overtime:

After 8 in a day and 40 in a week - 1½ times the regular rate

Averaging:

Upon notifying the Department of Labour, an employer may select an averaging period of 2 to 13 weeks.
Averaging periods of longer than 13 weeks, and up to one year, can be approved by the Minister of Labour.
An employer who has adopted an averaging plan is required to post clear information about the plan in conspicuous places of the establishment.

Alberta - (Employment Standards Act and Regulations)

Hours of Work:

Standard: 8 in a day
44 in a week

Exclusions: managerial, confidential and supervisory employees, farm labour, domestic service, public employees, municipal policemen, certain sales persons, chartered accountants and lawyers.

Overtime:

After 8 in a day and 44 in a week - 1½ times regular rate or time off in place of overtime pay if more than 44 in a week.

Exceptions: Field catering, geophysical exploration, land surveying, logging and lumbering, employees of a municipal district employed in road construction or maintenance or snow removal, oil well servicing: 10 hours in a day or 191 hours in a month.

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*The jurisdictions frequently establish specific standards for specific industries, i.e. logging, mining, garment industry, etc. These standards are set in regulations, board orders, etc.

Alberta - (Employment Standards Act and Regulations) (continued)

Ambulance drivers, taxi cabs drivers: 10 hours in a day or 60 hours in a week.

Employees of irrigation districts other than office employees: 9 hours in a day or 54 hours in a week.

Employees employed in the cultivation and preparation of trees, shrubs and plants: 9 hours in a day or 48 hours in a week.

Commercial truck and bus drivers: 10 hours in a day or 50 hours in a week.

Highway and railway construction and brush clearing: 10 hours in a day or 44 hours in a week.

Overtime Agreements:

Overtime agreements between the employer and his employees may be made, stipulating that compensatory time off may be given instead of overtime wages.

British Columbia - (Employment Standards Act)

Hours of Work:

Standard: 8 in a day
40 in a week

Exclusions: In British Columbia, the list of exclusions from the entire act and from the hours of work provisions is very extensive, covering nearly 30 categories of employees. For a complete list see the Employment Standards Act Regulation

Overtime:

After 8 in a day and 40 in a week - 1½ times regular rate;
after 11 in a day and 48 in a week - 2 times regular rate (excluding hours worked in excess of 8 in a day).

Variation of Hours of Work:

The director may authorize a variation of the overtime wage provisions where: a) hours worked are averaged over a period of more than one week; b) less than 5 days are worked in a week; or c) the basis for calculation of overtime wages has been established by agreement between the employer and the employees or their representatives.

Manitoba - (Employment Standards Act)

Hours of Work:	Standard and maximum: 8 in a day 40 in a week Exclusions: professional employees, farming, domestic servants employed in a private home who work no more than 24 hours in a week, fishing, voluntary employees for specific organizations, commissioned travelling salesmen, independent contractor, person employed in a private home as a sitter for a child or as a companion of an aged, infirm or ill member of the household, student in training, person employed under a rehabilitation or therapeutic project, certain provincial government employees, construction workers, employees employed in a business where only members of the employer's family are employed.
Overtime:	After 8 in a day 40 in a week - 1½ times the regular rate. Exclusions: same as above.
Variation of Hours of Work:	It is possible to vary the working hours of employees to establish a compressed workweek, or to facilitate the arrangement or rotation of shifts with the authorization of the Manitoba Labour Board. The Board may also authorize any daily, weekly or monthly maximum number of hours for any class or group of employees.

Newfoundland - (Labour Standards Act and Regulations, 1985)

Hours of Work:

A. Assistants (shop employees)

Standard: 8 in a day
40 in a week

Maximum: 16 hours in a day

B. Other employees

Standard: 44 in a week

Maximum: 16 hours in a day

Exclusion: professionals and students in professional training

Overtime:

Shop employees: After 8 in a day and 40 in a week - minimum set rate representing 1½ times the minimum wage

Other employees: After 44 in a week - 1½ times minimum rate

Exclusions: domestic servants, agricultural work other than production of fruit and vegetables in greenhouse and nursery operations and persons employed in the raising of livestock.

Nova Scotia - (Labour Standards Code and Regulation and General Minimum Wage Order)

Hours of Work:	Standard: 48 in a week Exclusions: Supervisory, managerial or employees employed in a confidential capacity, farm labourers, domestic servants, certain apprentices, professional employees or students of such professions, automobile, real estate and insurance salesmen, employees on fishing vessels, teachers, etc.*
Overtime:	After 48 in a week - 1½ times minimum rate. Exclusions: Same as above, plus ambulance drivers or attendants, employees employed in a building where they reside as janitors, watchmen or superintendants, and service station employees if the station they work at is required to remain open more than 48 hours in a week. Exception: An employee in the transport industry who is required to be away from his home base overnight is paid overtime after 96 hours in any two consecutive weeks.
Variation of Hours of Work:	Where by law, custom or agreement, the hours of work on one or more days of the week are less than the period determined by the Minimum Wage Board, the period so determined may be exceeded on the remaining days of the week, by agreement between the employer and the employees or their representatives.

Ontario - (Employment Standards Act and Regulation)

Hours of Work:	Maximum: 8 in a day 48 in a week Exclusions: supervisory and managerial employees, domestic servants, construction, resident janitors or caretakers, full-time firefighters, fishing or hunting guides, persons engaged in landscape gardening, mushroom growing, horticulture, and certain other agricultural activities, certain categories of professionals, teachers, funeral directors and embalmers, homeworkers, etc.*

Ontario - (Employment Standards Act and Regulation) (continued)

Overtime:

After 44 in a week - 1½ times regular rate.

Exceptions: Road building: streets, highways and parking lots - 55 hours before overtime rates applies.

Road building: bridges, tunnels and retaining walls: 50 hours before overtime rate applies.

Local cartage: 50 hours before overtime rate applies.

Highway transport: 60 hours before overtime rate applies.

Hotel, motel, tourist resort, restaurant and tavern employees who work 24 weeks or less in a calendar year and who are provided with room and board: 50 hours before overtime rate applies.

Fresh fruits and vegetable processing: 50 hours before overtime rate applies.

Sewer and watermain construction: 50 hours before overtime rate applies.

Exclusions: Mostly the same as above. See the Employment Standards Act Regulations.

Variation of Hours of Work:

The director may approve a variation of the working day for the purpose of establishing a compressed workweek.

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*In Nova Scotia and Ontario, the list of exclusions from the entire act from the hours of work provisions and from the overtime pay provisions is very extensive. For a complete list, see the appropriate Acts and Regulations.

Prince Edward Island - (Minimum Wage Order 1/85)

Hours of Work	Standard: 48 in a week Exclusions: registered apprentices, farm labourers who are not engaged in a commercial undertaking, persons employed for the sole purpose of protecting and caring for children in private homes, employees of non-profit organizations who are required to reside at a facility operated by their employer.
Overtime:	After 48 in a week - set minimum rate representing 1½ times minimum wage. Exclusion: all of above and ambulance drivers except in respect of the first 12 hours of overtime per week.

Québec - (An Act Respecting Labour Standards and Regulation Respecting Labour Standards)

Hours of Work:	Standard: 44 in a week Exclusions: The consort of the employer and their ascendants and descendants; a student employed in a social or community non-profit organization; an executive officer of an undertaking; an employee who works outside an establishment whose working-hours cannot be controlled; an employee assigned to harvesting, canning, packaging and freezing fruit and vegetables during the harvesting period; an employee of a fishing, fish processing or fish canning industry; a farm worker; an employee whose main duty is the care, in a dwelling, of a child, of a disabled, handicapped or aged person if that work does not serve to procure a profit to the employer; construction workers; certain contract workers; a student who works during the school year in an establishment selected by an educational institution pursuant to a job induction program approved by the Ministère de l'Éducation.

Québec - (An Act Respecting Labour Standards and Regulation Respecting Labour Standards) (continued)

	Exceptions: Domestic living in the employers' home: 53 hours in a week. Employees working in a remote area or on the James Bay territory: 55 hours. Employees working in a forestry operation or sawmill: 47 hours. A watchman other than one employed by a commercial surveillance service: 60 hours.
Overtime:	Work performed in excess of standard hours: 1½ times regular rate (i.e., premium of 50% of regular rate).
Staggering of Hours of Work:	An employer may, with the authorization of the Commission, stagger the working-hours in such a manner that the average working-hours are equivalent to the norm prescribed. The Commission's authorization is not required where staggering is provided by a collective agreement or a decree.

Saskatchewan - (Labour Standards Act and Regulation)

Hours of Work:	Standard: 8 in a day 40 in a week Maximum: 44 in a week Excluded from both hours of work and overtime provisions: employees in certain northern areas of province, managerial employees, farm workers, certain professional employees and students, commercial travellers, logging, road construction, automobile salesmen and civil servants employed as field employees, certain driver-salesmen in wholesale businesses, teachers, handicapped employed in a sheltered workshop or a work activity centre, and domestic workers.

Saskatchewan - (Labour Standards Act and Regulation) (continued)

Overtime:	After 8 in a day and 40 in a week - 1½ times the regular rate. Exceptions: certain employees of city newspapers - 80 hours in 2 weeks; oil truck drivers averaged over 1 year. Note: Special provisions are set for a 4 day week 10 in a day 40 in a week after which 1½ times the regular rate is paid.
Averaging of Hours of Work:	The director may authorize the averaging of hours of work on any period, in any occupational classification. The average number of hours worked by any employee must not exceed 8 in a day or 40 in a week during the averaging period. No authorization is necessary where the employer obtains the written consent of the trade union representing the employees and such consent is limited to providing that the average number of hours are not to be exceeded unless overtime wages are paid.
Variation of Hours of Work:	The director may authorize a variation of the standard hours of work to permit the establishment of a compressed workweek. No authorization is necessary if the employer obtains the written consent of the trade union representing the employees and such consent is limited to a compressed workweek of no more than 10 hours in any day or 40 hours in any week, unless overtime wages are paid.

Northwest Territories - (Labour Standards Act)

Hours of Work:	Standard: 8 in a day 44 in a week Maximum: 10 in a day 54 in a week Exceptions: mining and petroleum exploration and development, isolated transportation and tourist camps: 176 hours in four consecutive weeks with a maximum 216 hours in four consecutive weeks. Exclusions: domestic servants, trappers and persons engaged in commercial fisheries, members or students of certain professions, managerial employees.
Overtime:	After standard hours - 1½ times regular rate. Exclusions: Same as above
Averaging of Hours of Work:	Where the nature of the work in an establishment necessitates irregular distribution of hours of work, the Labour Standards Officer may authorize, in writing, the standard and maximum hours to be calculated as an average for a period of one or more weeks.

Yukon Territory - (Employment Standards Act and Regulation)

Hours of Work:	Standard: 8 in a day 40 in a week Maximum: 10 in a day 60 in a week 260 in a month Exclusions: employees who are members of the employer's family, mineral exploration, travelling salesmen, supervisory and managerial employees, members or students of certain professions, a guide or outfitter, a watchman or caretaker, farm workers, sitters, domestic servants and persons receiving a supplement to benefits under section 38.1 of the Unemployment Insurance Act, 1971.
Overtime:	After standard hours - 1½ times regular rate. Persons employed in mines are not to work in excess of the standard hours. Exclusions: same as above.
Averaging of Hours of Work:	Where the nature of the work justifies irregular distribution of hours of work, or where the employer and the trade union representing the employees agree in writing, the director may order that the weekly standard hours of work of those employees be averaged over a period of two or more weeks, as prescribed in the order.
Variation of Hours of Work:	Where the employer and the trade union, or a majority of employees where there is no trade union, agree in writing, the employees may work a compressed workweek of 10 hours in any day over a period of 4 days in a week, or 12 hours in any day over 3 days in a week, without requiring overtime wages to be paid.

WEEKLY REST-DAY

The Canada Labour Code (Section 31) provides that employees must be given at least one full day of rest in the week, on Sunday, if possible.

Two exceptions to this general rule are provided for in the regulations. A weekly rest-day does not need to be granted where working hours are averaged over a specified period.

Where working hours in excess of 48 in a week are allowed under a permit from the Minister of Labour, the Minister may specify in the permit that a weekly rest need not be scheduled, as required by the Code, and may prescribe alternative periods of rest.

Nine provinces -- Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Québec, Saskatchewan and the Yukon and Northwest Territories provide for a weekly rest-day, but the provisions vary in scope. These provisions are applicable to most employees within each jurisdiction.

The Alberta Employment Standards Act requires every employer to allow his employees, with the exception of farm workers, domestic workers in a private home, provincial government employees and municipal policemen, at least 24 consecutive hours of rest each week, 48 consecutive hours in each period of 14 consecutive days, 72 consecutive hours in each period of 21 consecutive days, or 96 consecutive hours of rest in each period of 28 consecutive days. If work is carried on by shift, an employee may not be required to change from one shift to another without at least 24 hours' notice in writing; the employee must be allowed 8 hours of rest between the shifts. Regulations made under the previous legislation make special provisions for accumulated days of rest in the highway and railway construction, geophysical exploration, land surveying, brush clearing, oil well drilling, oil well service and pipeline construction industries, for employees of rural municipalities engaged in road work, and for cooks, night watchmen, etc., in lumber camps.

The Employment Standards Act in British Columbia provides for a rest period of 32 consecutive hours weekly. The Act states that an employer who requires work during the 32-hour rest period must pay the employee double the regular wage for all hours worked.

Excluded by regulation from these requirements are: farm workers, horticultural workers, domestics, live-in homemakers, bus operators, truck drivers and their swampers or helpers, motorcycle operators, persons employed in connection with the operation of a kitchen, dining room, cookhouse, bunkhouse or recreation room that has been established for the sole purpose of serving employees of an industrial undertaking that is located in a rural area, ambulance drivers or attendants, etc.[1]

Different arrangements may be made on application of the employer and employees concerned if the Director of Employment Standards approves.

In Manitoba, the Employment Standards Act provides that a rest period of at least 24 consecutive hours, if possible Sunday, must be granted to most employees. Exempted are farm workers; independent contractors; persons employed in agriculture, fishing, fur farming, dairy farming or growing of horticultural or market garden products for sale; domestics in a private home employed for less than 24 hours in a week; specified volunteer workers; beneficiaries under a rehabilitation or therapeutic project given employment; students of professions; professionals; watchmen, janitors and firemen living in the building in which they are employed; managers and supervisory employees; repair workers in emergencies; and persons employed for not more than three hours on a weekly rest-day merely for the purpose of looking after horses as part of their usual duty. The Minister of Labour is given discretion to exempt a particular undertaking from the application of weekly rest provisions for a fixed period or indefinitely. Where a plant is exempted, each employee must be given an additional holiday without pay for each weekly day of rest to which he would have been entitled except for the permit of exemption, and the holidays may be accumulated.

The New Brunswick Employment Standards Act requires employers to give their employees a weekly rest of at least 24 consecutive hours, to be taken if possible on Sunday. The only employees not covered are employees required to cope with an emergency, and part-time workers who are not usually employed more than five hours in a day. Certain groups of employees may be exempted from the Act by the Director. Regulations may also exempt employees in certain occupations or classes of work, and in fact do with regard to certain professions.

Under the Newfoundland Labour Standards Act, an employer is required to grant his employees a weekly rest period of at least 24 consecutive hours, wherever possible on Sunday. The requirement does not apply to employees engaged in emergency work, or to persons employed solely in senior managerial capacities, or to a crew member of a ferry boat. It also does not apply to an employee who is subject to a collective agreement within the meaning of The Labour Relations Act 1977 and The Fishing Industry (Collective Bargaining) Act 1971.

Any employer or class of employers may be exempted by regulations, subject to such conditions as may be prescribed. Currently excluded are employers operating in remote areas whose employees have given the employer written notice that they do not wish a rest period.

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[1] For a more complete list of exclusions the reader is advised to consult B.C. Employment Standards Regulation 37/81, gazetted February 10, 1981, p.87-95.

Under the Nova Scotia Labour Standards Code, employees in industrial undertakings (e.g., mining, manufacturing, construction) must be granted a rest period of at least 24 consecutive hours in every period of seven days, preferably to all employees simultaneously on Sunday. This provision may be exceeded in continuous processes.

In Ontario, the One Day's Rest in Seven Act provides for 24 consecutive hours in every seven days for employees of hotels, restaurants or cafes in cities and towns having a population of 10 000 and over. Wherever possible, this rest day shall be on Sunday. This Act excludes watchmen, janitors, superintendents or foremen and persons employed less than five hours in any one day.

A regulation issued under the Employment Standards Act, states that domestic employees (cooks, housekeepers, nannies) are entitled to at least 36 consecutive hours of free time per week without deduction from wages. If work is performed during this free time, the equivalent amount of time off or payment at not less than $3 an hour must be given. Babysitters or companions are not covered by this order.

In Québec, An Act Respecting Labour Standards, provides for a weekly rest period of 24 consecutive hours. In the case of a farm worker, that day of rest may be postponed to the following week. An employer may, with the authorization of the Commission des normes du travail, stagger the working hours of his employees on a basis other than a weekly basis, provided that the average of the working hours is equivalent to the norm.

The Act applies to every employee regardless of where he or she works and to some government agencies. However, it does not apply to certain categories of employee: a person employed on a farm operated with the habitual assistance of not more than three employees; an employee whose main duty is the care of a child, or of a disabled, handicapped or aged person if the employer is a non-profit organization; an employee governed by the Construction Industry Labour Relations Act, 1968; a student who works during the school year on a job induction program approved by the Department of Education; and a worker who is party to a contract if the government, by regulation pursuant to another act, establishes the remuneration of that employee.

The Saskatchewan Labour Standards Act provides for a rest period of one day in every seven days for employees who usually work more than 20 hours in a week. Employers in most establishments where ten or more persons are employed, are required to grant a rest period of two consecutive days every week, one preferably on Sunday, if such employees work at least 20 hours per week. The retail trade is excluded from this provision, except where the retail establishment is subject to a municipal by-law requiring it to be closed during the whole or part of any day of the week other than Saturday, Sunday or Monday or where the employer is exempted from hours of work provisions by virtue of an established ten-hour day four-day workweek or by virtue of a permit authorizing averaging of the hours of work over a certain number of weeks. The director may grant a permit of exemption if satisfied that these provisions would work hardship on the employer or any class of employers, or any of his employees.

Also exempted are workers employed in farming, ranching or market gardening, managerial employees, firefighters, teachers, domestic workers employed in a private home, and employees of sheltered workshops or work activity centres who are socially, physically or mentally impaired or handicapped.

The Labour Standards Act of the Northwest Territories provides that, unless an exception is made by regulations, employees must be given at least one full day of rest in each week, and that the normal day of rest must be Sunday wherever possible. This Ordinance does not apply to domestic servants in private homes, trappers, persons engaged in commercial fisheries, students of professions, managers or superintendents, persons who exercise management functions.

In the Yukon each employee has two full days of rest in the week and, wherever practicable, Sunday shall be one of the normal days of rest. Exempted are employees who are members of the employer's family, individuals who search for minerals, travelling salesmen, individuals whose duties are solely of a supervisory or managerial capacity, students of professions and persons or classes of persons as may be designated by regulation.

ANNUAL VACATIONS WITH PAY

The Canada Labour Code, Part III, Division III provides for a vacation with pay of at least two weeks after each year of employment and three weeks after six years. Vacation pay is 4 per cent of wages for the year in which the employee establishes a claim to a vacation and 6 per cent of annual earnings after six years of employment.

A year of employment, under the federal law, must be continuous with one employer, and may be a 12-month period commencing with the day the employee began to work for the employer or any subsequent anniversary of that date, or it may be a calendar year or another year approved by the Minister of Labour.

All jurisdictions have annual vacations legislation. These provisions are contained in the Alberta Employment Standards Act, Part 3, Division 4; in the British Columbia Employment Standards Act, Part 4; in the Manitoba Vacations with Pay Act; in the New Brunswick Employment Standards Act, ss.24 to 28; in the Newfoundland Labour Standards Act, Part 1; in the Nova Scotia Labour Standards Code, ss.30 to 34; in the Ontario Employment Standards Act, Part VIII and regulations; in Québec, An Act respecting labour standards, Chapter IV, Division IV; in the Prince Edward Island Labour Act, Part 3; in the Saskatchewan Labour Standards Act, Part V and regulations; in the Labour Standards Act of the Northwest Territories; and in the Employment Standards Act of the Yukon.

Exclusions

The Canada Labour Code applies to industries within federal jurisdiction and there are no exclusions.

The provincial and territorial laws govern employees in employment within the jurisdiction of the province, with the exception of the classes of employees noted below.

Alberta excludes certain categories of salespersons, farm workers, domestics employed in a private dwelling, municipal police, provincial government employees and, by a special order governing the construction industry, construction workers with the exception of office employees employed at the construction site. British Columbia exempts certain named professionals, students employed at the school where they are enrolled, students enrolled at a secondary school under the supervision of a local school authority in a class of work experience or occupational or work study; students enrolled in an occupational training program under the direction of an instructor employed by the Ministry of Education, sitters, and persons receiving income assistance while participating in an employment program.

In Manitoba, people who are engaged in farming, ranching, market gardening and domestic servants remunerated by the householder where they are not employed for more than 24 hours in any week are excluded from the legislation.

In New Brunswick, teachers and persons employed in certain specified professions are exempted. In Newfoundland, members and students of certain professions are excluded.

In Nova Scotia, agricultural workers, persons employed on fishing vessels, certain salesmen, domestic servants employed in private homes, qualified practitioners and students of certain professions are exempted from the vacation pay provisions of the Code.

In Ontario, excluded are: qualified practitioners, students of certain professions, teachers, workers of commercial fishing, certain salesmen (registered, paid by commission, etc.), farm workers (except those who are employed on farms to harvest fruit, vegetables and tobacco who are eligible for a vacation with pay, or vacation pay, if they have been employed for 13 weeks or more), certain listed trainees on courses, secondary school students who perform work under a work experience program authorized by the school board in which they are enrolled, persons who perform work under a program approved by a community college or university, inmates of a correctional institution who participate in an authorized work project or rehabilitation program, and offenders who perform work or services under an order or sentence of a court.

Prince Edward Island excludes persons who work 24 hours or less in a week, farm labourers other than in a commercial undertaking and commissioned salesmen.

In Québec these provisions do not apply to the employer's immediate family; to a student employed in a non-profit organization; to certain categories of salesmen; to an insurance agent remunerated on commission; to a supernumerary employee during the harvesting period; to a trainee within the framework of a training program recognized by law; to farm workers employed on farms where not more than three employees are normally employed, to employees whose main duties are the care, in a dwelling, of a child, or of a disabled, handicapped or aged person, if that work does not serve to procure profit to the employer; construction workers; certain contractors whose remuneration is derived from profit, and students working in certain job experience programs. The large group of workers governed by collective agreement decrees are also outside the scope of the Québec vacation order.

Saskatchewan exempts an employee in an undertaking in which only members of the employer's family are employed, persons engaged in farming, ranching, market gardening (except egg hatcheries, greenhouses, nurseries and bush clearing), teachers and certain Crown employees.

The Northwest Territories Act excludes domestic servants, trappers, persons engaged in commercial fisheries, members and students of certain professions and persons who exercise management functions. The Yukon Territory Act excludes the employer's family, a sitter and persons receiving a supplement to benefits under s.38 of the Unemployment Insurance Act.

Vacation Pay

As indicated in the table, Manitoba requires the payment of regular pay for the vacation period. Regular pay means the pay the employee would have earned for his normal hours of work during the vacation period.

In most jurisdictions, vacation pay is a percentage of the employee's earnings for the period during which he establishes his right to a vacation. The acts vary in what is included as earnings. Vacation pay is defined as 4 per cent of the annual earnings except in Saskatchewan where it is 3/52 of annual earnings on completion of one year's service, and 4/52 on completion of the tenth and subsequent years. In Alberta, employees paid by the month are entitled to their regular pay for the month divided by 4 1/3 for each week of vacation. In British Columbia and the Northwest Territories, vacation pay is defined as 6 per cent of annual earnings after five years of service; in Manitoba after four years; in the federal jurisdiction after six years; and in Québec after ten years.

Entitlement

In all jurisdictions except Saskatchewan, employees are entitled to two weeks annual vacation after each complete year of employment. In British Columbia, an employee is entitled to two weeks after each completed year of employment and one additional week after the completion of five years of employment with the same employer. In Saskatchewan, an employee is entitled to three weeks annual vacation after one year of employment and to four weeks after ten years. In Manitoba, an employee is entitled to two weeks' vacation after each year of employment and three weeks for each year of service subsequent to the fourth year. The years need not be continuous, but the employee must have worked at least 50 per cent of his regular working hours in each of four years in the preceeding ten years. He must also have worked 95 per cent of his normally scheduled hours in the fifth year to be entitled to three weeks vacation.

After five years of employment with any one employer, be it five years continuous or five years accumulated within the past ten years, an employee in the Northwest Territories is entitled to three weeks annual vacation; while in Québec, an employee who is credited with ten years of uninterrupted service with the same employer is entitled to three weeks vacation.

Most of the laws specify the working time constituting a year of employment. In British Columbia, the director of employment standards may authorize an employer to use a common anniversary date to calculate annual vacation entitlement and where an employee has not completed a full year, the employer must give him an annual vacation calculated on a proportional basis. In New Brunswick, a "vacation pay year" consists of the period from July 1 to the following June 30. The employee is entitled to one day per month during which be or she worked at least 19 days, or to two weeks vacation, whichever is less.

In Manitoba, an employee is held to have completed a year's service if he has worked not less than 95 per cent of the regular working hours during a continuous 12-month period. In Newfoundland, Nova Scotia and Prince Edward Island, the employee must have worked 90 per cent or more of the working time during the year. However, in Nova Scotia and Prince Edward Island, the minimum proportion of working time required is based on the normal working time in the establishment rather than on the individual's actual hours of work, as it is in Manitoba and Newfoundland.

In Québec, a "reference year" is a period of 12 consecutive months. That period extends from May 1 of the preceding year to April 30 of the current year unless an agreement or decree fixes a different starting date. In Saskatchewan, an "accumulated year of employment" means any year of employment that has been accumulated in consecutive periods that are not separated by more than 182 days. In the territories a "year of employment" is defined as continuous employment of an employee by one employer for a period of 12 consecutive months beginning with the date employment began or any subsequent anniversary date.

An employee who has worked less than the prescribed working time for a year's continuous service and continues to work for the same employer is entitled to a vacation on a pro rata basis in Alberta and New Brunswick, and to accrued vacation pay for the period worked during the year in British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Northwest Territories and the Yukon Territory. In such a case, the vacation pay is payable in Prince Edward Island not later than the next regular pay period after the end of the vacation pay year; in Manitoba, on the anniversary date of the worker's employment; in Newfoundland, within two weeks after the anniversary date; and in the other provinces, within a month after the anniversary date.

In Québec, a worker who has not completed a year's service for the same employer is entitled to a continuous vacation of one day for each working month to a total not exceeding two weeks. If the vacation pay which an employee would otherwise receive would be reduced by reason of absence from work due to sickness, accident or maternity leave, the 4 per cent or 6 per cent calculation is not used. Instead, the employee receives vacation pay equal to two or three times, as the case may be, the weekly average of the wage earned during the period of work. An employee whose annual leave is less than two weeks receives an amount proportional to the days of leave credited to his or her account. Similarly, in Saskatchewan, regulations provide that, in order to make the vacation entitlement date of employees uniform, an employer may grant to an employee with less than a year's service a continuous vacation of one and one-half days for each month of employment.

When Vacation is Taken

The employer may determine the time when each employee may take annual vacation, within certain limits laid down by law. The vacation must be given in New Brunswick not later than four months after June 30; in Manitoba within ten months, and in the federal jurisdiction, British Columbia, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, not later than ten months after the date on which the employee becomes entitled to a vacation; in Québec the leave must be taken within 12 months after the end of the reference year, unless a collective agreement or decree allows it to be deferred to the following year; and in Saskatchewan and Alberta not later than 12 months after the date of entitlement. In the Yukon and Northwest Territories, the vacation must be granted not later than ten months after the date on which the employee becomes entitled to it. Vacation pay must be given at least one day before the vacation is to begin or at an earlier date, if the regulations so prescribe.

How Vacation is Taken

Most jurisdictions specify that the vacation to which an employee is entitled may be taken or given in one or more unbroken periods.

In Alberta, the vacation may be taken in one unbroken period of two weeks, or, at the request of the employer, in two one-week periods. In British Columbia, an employee may take his vacation in periods of one or more weeks at a time. In Newfoundland, unless an employee agrees to shorter periods, she or he is entitled to take the annual vacation in one unbroken period of two weeks, or in two unbroken periods of one week, provided that the employee gives the employer written notice of the option chosen not later than the date on which she or he becomes entitled to the vacation. In Nova Scotia, an employee is entitled to an unbroken vacation, but the employee and the employer may by agreement provide for two or more vacation periods. In Ontario, an employer may determine when an employee can take annual vacation, which shall be for a two-week period or two periods of one week each. In Prince Edward Island, an employee is entitled to an unbroken vacation. In Québec, the annual vacation may be broken into two periods if the employee requests it. That is not possible, however, when the employer closes down operations during the period of annual vacations. A provision of a collective agreement may provide for the division of the vacation into more than two periods, or prohibit it. In Saskatchewan, an employee is entitled to the entire vacation in one continuous and uninterrupted period, but cannot split the vacation into periods of less than one week. The Canada Labour Code, Manitoba, the Northwest Territories and the Yukon provide for an annual vacation but no mention is made as to whether it can be broken. In New Brunswick, the new Employment Standards Act, although not specific, refers to "a vacation that as a minimum is equal to ..." whatever period the employee is in fact entitled to.

Notice

Nine jurisdictions require an employer to give notice to the employee of when his or her vacation is to begin. The minimum period of notice required is one week in New Brunswick, Nova Scotia and Prince Edward Island; two weeks in the federal jurisdiction and Newfoundland; 15 days in Manitoba; and four weeks in Québec and Saskatchewan. Under the Canada Labour Code, and in Manitoba, Newfoundland and Saskatchewan, another period of notice may be substituted by agreement. In Alberta, the employer must give the employee one week's notice, if agreement cannot be reached regarding the date on which the vacation is to commence.

When vacation pay must be paid

An employer in a federal undertaking is required to pay employees their vacation pay during the 14 days before the beginning of the vacation, except in cases where it is impracticable to do so and the custom of the establishment is to pay vacation pay on the regular payday during or immediately following an employee's vacation. Most of the provincial laws require vacation pay to be paid at least one day before the vacation begins. In Alberta, vacation pay must be paid to an employee at least one day but not more than two weeks before the commencement of the leave. In British Columbia, an employee is entitled to vacation pay at least seven days before the annual vacation begins. In Ontario, the employee is entitled to vacation pay on the regular payday during the vacation period or at a time designated by the director of employment standards. The Québec law simply states that vacation pay must be paid before the beginning of the leave. In Saskatchewan, an employer must pay an employee's vacation pay during the 14 days immediately preceding the beginning of the vacation.

Statutory Holiday

The Canada Labour Code stipulates that an employee's annual vacation may be extended by one day in lieu of a general holiday that occurs during the vacation. Several provincial laws make this provision mandatory. In Manitoba, when a general holiday occurs during the period of a vacation with pay, the employee's vacation must either be lengthened by one day or the employee must be granted another day off with pay not later than 60 days following the vacation, or on another day mutually agreed to by the employer and the employee. In Ontario, the employer must either pay the employee, if the employee agrees, regular wages for the public holiday or grant him or her another working day off with pay not later than his or her next annual vacation. (In Manitoba, Newfoundland and Saskatchewan, a general holiday is defined as a day for which an employee is entitled to be paid wages without being present at work.) The federal, Alberta and Saskatchewan laws provide further that for the extra day the employee is to be paid the wages to which she or he is entitled for the holiday.

The Yukon Act provides that, if a general holiday occurs during an employee's vacation, the vacation is to be extended by one day in lieu of the holiday, and that the employee must be paid the usual wages for the holiday, in addition to vacation pay.

Termination of Employment

Under the Canada Labour Code and all the provincial laws, workers are entitled to vacation pay on termination of employment during the working year. In most jurisdictions vacation pay must be paid immediately on termination of employment. In British Columbia, where the employer terminates the employee's employment, the employee must be paid all wages owed him or her immediately and where the employee terminates the employment he or she must be paid all wages owed within six days. In Ontario and Newfoundland, vacation pay is payable within seven days of the date of termination; in Nova Scotia, within 10 days; in New Brunswick[1] and Prince Edward Island, by the next regular payday following termination of employment, and in Saskatchewan within 14 days of termination.

In Alberta, employers in the construction industry must give each employee vacation pay at least equal to 4 per cent of wages on December 31 of each year, or on termination of employment. If the employee is to receive an annual vacation, he or she must be paid vacation pay the day before the vacation commences.

In both territories, when employment is terminated during a year, the employee is entitled to any vacation pay owed in respect of a previous completed year of employment and to 4 per cent of his wages for the period she or he has worked during the year--or, in the Northwest Territories, 6 per cent--if the employee is entitled to it. In the Yukon Territory an employee is not entitled to vacation pay, however, unless she or he has been continuously employed for 30 days or more.

When a business changes hands, an employee is considered to have been in continuous employment before and after the transfer.

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[1] The Employment Standards Act in New Brunswick also adds that under no circumstances shall the employer delay payment beyond 21 days after the last day the employee was employed.

11. ANNUAL VACATIONS WITH PAY

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
Canada Canada Labour Code and Labour Standards Regulations	a) 2 weeks b) 3 weeks after 6 consecutive years with same employer	4% of annual earnings 6% of annual earnings after 6 years	In respect of every year of employment, and granted within 10 months of completion of year. The director may approve an application by the employer and/or the employee to waive the right to vacation time or to postpone an employee's vacation.	Within 14 days before vacation begins, or where this method is impracticable, on a payday during or after vacation according to established practice.
Alberta Employment Standards Act	2 weeks; to be taken in one unbroken period or in 2 periods of one week each, at the employee's request.	4% of annual earnings If paid by the month: month's regular pay divided by 4 1/3 for each week of vacation	Within 12 months after each year's employment.	At least one day but not more than 2 weeks before vacation begins or on termination of employment.
British Columbia Employment Standards Act	a) 2 weeks b) 3 weeks after 5 continuous years with same employer. The employer cannot	4% of annual earnings 6% of annual earnings after 5 years, (i.e., 2% per week of vacation)	At the conclusion of each working year; the vacation time must be granted within 10 months after the anniversary date of his employment.	At least one week before vacation begins.

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
British Columbia (cont'd)	require an employee to take his vacation in periods of less than one week's duration.			
Manitoba Vacations with Pay Act	2 weeks; 3 weeks after 4 years (4 years' service must be completed within 10 years)	regular pay	On completion of year's service; the vacation time must be granted within 10 months after the 12 month qualifying period.	At least one day before vacation begins. Salaried employees may be paid on regular payday if they agree.
New Brunswick Employment Standards Act	2 weeks; to be taken in one unbroken period of 2 weeks.	4% of annual earnings	No later than 4 months after end of vacation pay year (July 1 - June 30).	At least one day before vacation begins.
Newfoundland Labour Standards Act	2 weeks; to be taken in one unbroken period or 2 unbroken periods of one week each, unless the employer and employee agree otherwise.	4% of annual earnings	Within 10 months after 12-month period. Regulations may establish system for taking vacation during the year in which vacation accruing.	At least one day before vacation begins.

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
Nova Scotia Labour Standards Code	2 weeks; to be taken as agreed but must include one unbroken period of one week.	4% of annual earnings	Within 10 months after 12-month period.	At least one day before vacation begins.
Ontario Employment Standards Act	2 weeks; to be taken in one unbroken period or 2 unbroken periods of one week each, as determined by the employer.	4% of annual earnings	After 12 months of employment. The leave must be granted not later than 10 months after the period for which the vacation was given. Any agreement between the employer and the employee respecting payment in lieu of vacation is subject to the approval of the director.	On the regular pay day of the employee during the vacation period, or at a time designated by the Director of Employment Standards.
Prince Edward Island Labour Act	2 weeks; to be taken in one unbroken period.	4% of annual earnings	After 12-month period.	At least one day before vacation begins.

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
Québec Act Respecting Labour Standards	2 weeks after 1 year; 3 weeks after 10 years; if less than 1 year of service: 1 day/month up to a maximum of 2 weeks. The annual leave may be divided into 2 periods where so requested by the employee, unless a provision of a collective agreement or of a decree provides otherwise, or unless the employer closes his establishment for the annual leave period. A leave not exceeding one week cannot be divided.	4% of gross wages during the reference year (May 1-April 30) 6% after 10 years	Within 12 months after the end of the reference year, unless the terms of a collective agreement or a decree permit it to be deferred. At the request of the employee, the third week of leave may be replaced by a compensatory indemnity if the establishment closes for two weeks on the occasion of the annual leave.	In a lump sum before departing on vacation.

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
Saskatchewan Labour Standards Act	3 weeks after 1 year; 4 weeks after 10 years; to be taken in continuous periods of at least one week.	3/52 of annual earnings; 4/52 of annual earnings	Within 12 months after each year of employment. The employer and the employee may enter into an agreement that, because of a shortage of labour, the employee will not take the vacation time to which he or she is entitled.	During 14 days before vacation begins.
Northwest Territories Labour Standards Act	2 weeks after 1 year; 3 weeks after 5 years	4% of annual earnings; 6% of annual earnings	Within 10 months after the year of employment for which the employee became entitled to a vacation. A Labour Standards Officer may approve an application by the employer and/or the employee to waive the right to vacation time or to postpone the vacation.	At least one day before vacation begins.
Yukon Territory Employment Standards Act	2 weeks	4% of annual earnings	Within 10 months following the completion of the qualifying year of employment. The employer and employee may enter into an agreement that the latter will not take the vacation time to which he or she is entitled.	At least one day before vacation begins.

GENERAL HOLIDAYS

The federal jurisdiction, nine provinces -- Saskatchewan, Newfoundland, Quebec, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario -- and the two territories, have legislation of broad application dealing with paid general holidays.

The tables which follow in this section give the paid general holidays and the pay for holidays worked and not worked for the federal jurisdiction and the provinces.

Federal

Under the Canada Labour Code, Part III, Division IV, nine general holidays in a year are to be observed as paid holidays -- New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day. The Code also provides that, under certain conditions, an alternative holiday may be substituted for any of the nine holidays specified.

Should a holiday occur on a day on which an employee does not normally work, he or she must be granted a day off with pay in lieu of the holiday, either at a time convenient to the employer and employee or by the addition of a day to the annual vacation.

If Christmas, New Year's Day, Dominion Day or Remembrance Day fall on a Saturday or Sunday that is a non-working day for an employee, the employee must be given a holiday with pay on the working day immediately before or after the general holiday. These provisions regarding alternative days off do not apply, however, to employees covered by a collective agreement that entitles them to at least nine paid holidays a year.

The Code lays down the general principle that an employee in a federal undertaking who does not work on a holiday is entitled to regular pay for the day. If the employee is paid by the week or month, wages must not be reduced by reason of his or her not working on a holiday. If the employee is paid on any other basis, he or she must receive the equivalent of the regular wages for a normal working day. The regular rate of wages for an employee whose hours of work vary from day to day or who is paid other than on an hourly or daily basis is the average of daily earnings, exclusive of overtime, for the 20 days worked immediately preceding the holiday.

An employee in a federal undertaking who is required to work on a general holiday is entitled to regular wages for the day and, in addition, to time and one-half the regular rate for all time worked. In effect, he or she is paid two and one-half times the usual rate.

Different provisions apply to employees employed in continuous operations who are required to work on a holiday. A "continuous operation" is defined to include any industrial establishment in which in each seven-day period operations normally continue without cessation until the end of the regularly scheduled operations for that period. For example, the operation of trains, planes, ships, trucks and other vehicles; telephone, radio, television, telegraph or other communication or broadcasting services; or any other operation normally carried on without regard to Sundays or holidays.

An employee who works on a holiday must be paid regular wages for the day and must, in addition, be paid one and one-half times the regular rate for the time worked, or must be granted a holiday with pay at some other time, either a day added to annual vacation or another day convenient to the employee and employer or, where a collective agreement so provides, be paid for the holiday on his or her next non-working day. However, an employee who is not entitled to wages for at least 15 days during the 30 calendar days immediately preceding the holiday is entitled to 1/20th of the wages he or she has earned during those 30 days.

There are some situations in which an employee is not entitled to holiday pay. An employee is not entitled to pay for a general holiday that occurs in his or her first 30 days of employment with an employer, but if required to work on a holiday he or she must be paid time and one-half the regular rate. If employed in a continuous operation, he or she may be paid at the regular rate for work done on a holiday.

An employee in a continuous operation is not entitled to pay for a general holiday if he did not report for work in response to a call from the employer, or if he or she is not available for work in accordance with the conditions of employment prevailing in the establishment in which he works. Such an employee is also not entitled to pay for a general holiday which occurs during the first 30 days of employment.

A general regulation provides that a longshoreman employed by an employer who is a member of a "multi-employer unit" is entitled to holiday pay if he or she is entitled to wages for at least 15 days or 120 hours in the 30 calendar days immediately preceding a general holiday. Pay for the holiday may not be less than eight times the employee's basic hourly wage rate.

A longshoreman employed by an employer who is not a member of a "multi-employer unit" must be paid, on each payday in lieu of general holidays, an amount equal to 3.5 per cent of the basic wage rate multiplied by the number of hours he or she has worked for the employer in the pay period.

A longshoreman who is required to work on a general holiday is to be paid at not less than one and one-half times the basic rate of wages for the time worked on that day.

Alberta

In Alberta, the Employment Standards Act requires employers to give their employees eight paid holidays a year - New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day. The Crown and its employees, domestic servants in private homes, farm labourers, municipal policemen and various categories of salesmen are excluded from entitlement to public holidays.

The rule is that if one of the eight general holidays falls on a regular working day for the employee and she or he does not work on that day, the employee is entitled to regular wages for the day.

If employees are paid by the week or month, their wages must not be reduced by reason of their not working on the holiday. If they are paid on a daily or hourly basis, they must be paid at least the equivalent of the wages they would have earned for their normal hours of work. If wages are calculated on other than an hourly, daily, weekly or monthly basis, employees must receive the equivalent of their average daily earnings, exclusive of overtime, for their term of employment or for the two months they worked immediately preceding the week in which the holiday occurred.

Where employees are required to work on a general holiday, they must be paid their regular pay for the day and, in addition, time and one-half their normal wages for the time worked. Alternatively, employees must be given a holiday with pay at some other time not later than their next annual vacation, or on termination of employment, whichever occurs first.

Employees are not entitled to a holiday with pay if they have not worked for the employer for at least 30 days in the preceding 12 months; or if they do not work on the holiday when required or scheduled to do so; or if they are absent without the employer's consent on either of the working day immediately preceding or following the holiday. If such an employee works on a general holiday, she or he must be paid at least normal wages for all time worked.

If employees are not required to work on a general holiday, they must not be required to work on another day of that week that would otherwise be a day of rest, unless they are paid normal wages for the day, in addition to all other wages due them.

Construction workers in Alberta, with the exception of office staff and brush-clearing employees, must be given holiday pay in a lump sum in lieu of being given a holiday with pay and each of eight general holidays.

Employers in the construction industry are required to pay employees a sum equal to 3.2 per cent of their ordinary pay for the period of their employment or the period since they last paid such sum. Pay in lieu of holidays must be given on December 31 of each year or on termination of employment.

British Columbia

In British Columbia, a regulation made under the Employment Standards Act provides for nine paid general holidays a year -- New Year's

Day, Good Friday, Victoria Day, Dominion Day, British Columbia Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day. Another day may be substituted for any of the listed holidays.

The regulations do not apply to employees covered by a collective agreement under the Labour Code or the Public Service Labour Relations Act. Also excluded are: managers, certain listed professionals, employees employed primarily to harvest fruit or berry crops, various categories of salesmen, students in certain approved work programs, students employed at the school where they are enrolled and persons employed in a private residence solely to attend to a child, a disabled, infirm or other person.

If a holiday falls on a day that is a non-working day for the employee, she or he must be given a holiday with pay at some other time not later than the next annual vacation, or the day on which the employer is required to pay the vacation pay if she or he has not earned an annual vacation, or on termination of employment, whichever occurs first.

An employee who is not required to work on a general holiday that would otherwise be a working day must be paid regular pay for the day. If paid by the week or month, her or his wages must not be reduced by reason of not working on a holiday. If paid on any other basis she or he must receive the equivalent of a normal day's pay.

Where an employee's working hours vary from day to day, or where wages are not calculated on a time basis, pay for a general holiday is to be deemed to be the average of the employee's daily earnings, exclusive of overtime, for the days she or he has worked in the four-week period immediately preceding the week in which the holiday occurs.

An employee who is not required to work on a general holiday must not be required to work on another day of that week that would otherwise be a day of rest, unless paid at her or his regular rate for all hours worked, in addition to all other wages due.

The general rule is that an employee who is required to work on a holiday must be paid not less than one and one-half times the regular rate of pay for all hours worked and, in addition, must be given a holiday with pay at some other time not later than her or his next annual vacation or the day on which she or he is required to be paid accrued vacation pay, or on termination of employment, whichever occurs first.

Where, pursuant to a collective agreement, certain employees of an employer are entitled to a holiday in place of a general holiday provided for in the act, and other employees of the same employer are not covered by the agreement, the employer may give all the employees a holiday on the day specified in the agreement so that all the employees will receive a holiday on the same day.

For purposes of these provisions, an employee's "regular rate" is deemed to be the average hourly earnings, exclusive of overtime, for the hours she or he has worked in the four-week period immediately preceding the week in which the holiday occurs.

An employee is not entitled to pay for a general holiday that occurs during the first 30 days of employment. An employee is also excluded from holiday benefits if she or he has not earned wages for at least 15 days during the 30 calendar days immediately preceding the holiday.

Where the operation or service in which an employee is employed is normally carried on every day and the employer requires an employee to work on the general holiday, the employer must pay the employee in addition to the regular rate of pay for the day, either one and one-half times the regular rate for all hours worked, or a holiday with pay at some other time.

Manitoba

In Manitoba, the Employment Standards Act provides for seven paid general holidays a year -- New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day and Christmas Day. Under certain conditions, another day may be substituted for any of the holidays named in the Act. A special act deals with the observance of Remembrance Day.

Provisions in the minimum wage order of Manitoba deal with the question of pay for public holidays. Workers are protected against a reduction in the minimum wage for time not worked on a general holiday which falls on a regular working day. Where an employee does not work on a holiday but does work the regularly scheduled hours on the days immediately preceding and following the holiday and on all the other working days in the week, he or she is deemed, for the purpose of determining the minimum amount of wages to be paid for that week, to have worked regular hours on the holiday. An employee does not lose the benefits of this provision through being absent on either the day before or the day after the holiday because of established illness or with the employer's consent.

The holiday provisions do not apply to independent contractors; persons employed in agriculture, fishing, fur farming, dairy farming or the growing of horticultural or market garden products for sale; domestic servants in private homes employed for less than 24 hours in a week; volunteers working in a religious, philanthropic, political or patriotic institutions; beneficiaries under a rehabilitation or therapeutic project who are given employment; or students and practitioners of professions governed by statute.

An employee who does not work on a holiday that falls on a regular working day is entitled to be paid at least the equivalent of the wages he would have earned on that day. When an employee's wages vary from day to day, the holiday pay must be at least equivalent to his or her average daily earnings, exclusive of overtime, for the days worked during the 30 calendar days preceding the holiday. The holiday pay must be paid whether or not the employee is on the employer's payroll at the time of the general holiday, unless the employee has voluntarily terminated employment before that day.

Should a holiday occur on a day that is a non-working day for the employee, he or she must be granted a day off with pay in lieu of the holiday not later than at the time of the next annual vacation or at a time convenient to the employee and the employer.

If New Year's Day, Canada Day or Christmas Day falls on a Saturday or Sunday that is a non-working day for the employee, he or she must be given a holiday with pay on the working day immediately preceding or following the holiday.

An employer must not require an employee who has not worked on the holiday to work on another day in the holiday week that would otherwise be a day of rest, unless the employee is paid one and one-half times the regular rate for work done on that day.

An employee who is required to and does work on a general holiday is entitled to regular pay for the day and, in addition, to one and one-half times the regular rate for the work done on that day.

An employee is not entitled to holiday pay in the following situations: if he or she has not earned wages on at least 15 days during the 30 calendar days immediately preceding the holiday; if he or she did not report for work in response to a call from the employer on the day of the general holiday, except where he or she is dismissed or laid off by the employer or is ill; or if he or she is absent without the employer's consent on the regular working day immediately preceding or following the holiday, unless absent because of established illness. However, an employee who is not entitled to holiday pay for any of the above reasons must be paid at the overtime rate if he or she works on the holiday.

Employees in the construction industry are entitled to a lump sum in lieu of paid holidays. They must be paid 4 per cent of their total gross wages, exclusive of overtime, for the calendar year. This amount must be paid by December 31 or on termination of employment. Where employees in the construction industry are required to work on a holiday, they must be paid at one and one-half times the regular rate for the time worked, in addition to the lump sum.

Special provisions are also applicable to employees in a continuously operating plant, seasonal industry (except construction), place of amusement, gasoline service station, hospital, hotel or restaurant, or in domestic service other than in private homes. For these employees, equivalent compensatory time off may be substituted for overtime pay for holidays worked. The time off must be granted within 30 days and employees must be given at least two days' notice of the day off. At the request of the employee, the employer may agree to a later date.

A special act in Manitoba deals with the observance of Remembrance Day. Work must not be performed on the holiday except in farming, in certain listed essential services, in continuously operating plants, or in emergency circumstances on permit from the Minister of Labour.

Employees required to work on Remembrance Day must be paid at least their regular rate of wages and must be granted a day off with pay within 30 days before or after the holiday. In lieu of being given a day off, employees must be paid twice their regular rate for the time worked. Where an employee is called in to work, he or she must be paid for the time worked or for not less than half the normal working hours of a regular working day, whichever is greater.

New Brunswick

In New Brunswick, provisions have been made for six paid general holidays under the Employment Standards Act -- New Year's Day, Good Friday, Canada Day, Labour Day, Christmas Day and New Brunswick Day (first Monday in August).

The holiday provisions do not apply to employees who have worked less than 90 days in the previous 12 months; who have not worked for all or part of at least 15 days during the 30 calendar days immediately preceding the holiday; who, without reasonable cause, fail to work on the scheduled work day immediately preceding or following the holiday; who after agreement, without reasonable cause, fail to report for and perform the work; or who work under an agreement whereby they elect to work or not when requested to do so.

The employer shall give the holiday and pay to the employee regular wages for each public holiday. Upon mutual arrangement, another day may be substituted, not later than the next annual vacation, for a public holiday. When a holiday falls upon a non-working day, or during an employee's vacation, an employer shall pay the employee's regular wages or designate another working day. Work on a public holiday is compensated at one and one-half times the regular rate and is not taken into consideration in calculating overtime. If an employee ceases employment before a substituted day is taken, the employer shall pay the wages for that day. Where wages vary from day to day, the pay for a public holiday shall not be less than the average daily wage earned over the preceding 30 calendar days. A payment of three per cent of gross pay is equivalent to the public holiday benefits.

Where an employee is employed in a hotel, motel, tourist resort, restaurant, tavern or any continuous operation, and the employee, because of the nature of the operation, is required to and does work on a public holiday, the employer shall pay the employee one and one-half times the regular rate, or pay the regular rate and substitute another working day for the public holiday.

Provisions dealing with public holidays do not apply to students and practitioners of certain professions or to certain categories of salesmen.

Newfoundland

The Newfoundland Labour Standards Act provides for five paid general holidays -- New Year's Day, Good Friday, Memorial Day, Labour Day and Christmas Day.

The holiday provisions do not apply to an employee if the public holiday occurs within 30 days following the commencement of her or his employment or if the employee has been absent from work for more than 15 days during the 30 days preceding the public holiday. An employee who fails, without just cause or without the consent of the employer, to comply with the contract of service on the regular work day immediately preceding or succeeding the public holiday is also excluded. Also, it does not apply to an employee whose period of employment is less than 20 hours in the week in which the public holiday occurs.

An employee who is entitled to a holiday with pay must be paid at the regular rate of pay for a holiday not worked.

Where a holiday falls on a non-working day, the employee must be given a holiday with pay on the working day immediately following the public holiday or during another day if the employer and employee agree.

If an employee agrees that a public holiday will be a working day, she or he must be paid twice the regular pay, or must be given one full day's holiday within 30 days after the public holiday with regular pay or be permitted to add one full day with pay to her or his annual vacation.

Nova Scotia

The Nova Scotia Labour Standards Code provides for five paid general holidays -- New Year's Day, Good Friday, Dominion Day, Labour Day and Christmas Day. Under certain conditions, another day may be substituted for any of these holidays.

The holiday provisions do not apply to domestic servants in private homes, professional practitioners and trainees, various categories of salesmen, employees covered by a collective agreement, fishermen, fish packing employees, certain workers in the petrochemical industry, and persons working in specific areas of primary farming.

Employees are entitled to a holiday with pay for each general holiday falling within any period of their employment.

If an employee is hired by the week or month, wages must not be reduced by reason of his or her not working on the holiday. If the employee is paid on a daily or hourly basis, he or she must be paid at least the equivalent of the wages he or she would have earned for the normal hours of work. If wages are calculated on other than an hourly, daily, weekly or monthly basis, the employee must receive the equivalent of the wages he or she would have earned at the regular rate of wages for a normal working day.

If a holiday falls on a day that is a non-working day for the employee, he or she must be given a holiday with pay on the working day immediately following the general holiday, or on the day immediately following the annual vacation, or on a day agreed upon by the employee and the employer.

Where employees are required to work on a holiday they must be paid at a rate equal to one and one-half times the regular rate of wages for the time worked on that day. Where employees employed in a continuous operation are required to work on a holiday, they must be paid as described above, or they may be granted a holiday with pay on the working day immediately following their annual vacation, or on another day agreed upon by the employee and the employer.

An employee is not entitled to a holiday with pay if he or she has not earned wages for at least 15 days during the 30 calendar days immediately preceding the holiday; or if he or she is absent on either of the working days immediately preceding or following the holiday. (This provision is not applicable if the employer has directed him or her not to report on either day.) An employee in a continuous operation is not entitled to be paid for a general holiday on which he or she did not report for work after having been called upon to work on that day.

Ontario

The Ontario Employment Standards Act provides for seven public holidays. The holidays are New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and Christmas Day. An employer shall give employees a day off as well as regular wages for each public holiday.

The holiday provision does not apply to an employee who is employed for less than three months; has not earned wages on at least 12 days during the four weeks immediately preceding a public holiday; fails to work the scheduled regular day of work preceding or following a public holiday; has agreed to work on a public holiday and who, without reasonable cause, fails to report and perform the work; or is employed under an arrangement whereby the employee may elect to work or not when requested to do so.

This provision also does not apply to managers and supervisors; hunting or fishing guides; employees in landscape gardening, mushroom growing, flower growing for retail or wholesale, or the growing, transporting and laying of sod; students employed as supervisors or instructors of children or at a children's camp; a student directly employed in a recreational program operated by a charitable organization; resident superintendents, janitors or caretakers; taxicab drivers, commissioned salesmen (excluding route salesmen); primary farm labourers; full-time firefighters; certain practitioners; domestic servants; teachers as defined in the Teaching Profession Act; employees in commercial fishing; students in training for certain professions; secondary school students working under a work experience program authorized by the school board in which they are enrolled; persons who perform work under a program approved by a community college or university; inmates of correctional institutions who participate inside or outside the institution in a work project or rehabilitation program authorized under the Ministry of Correctional Services Act; or offenders who perform work or services under an order or sentence of a court.

Effective January 1, 1981, domestic employees (cooks, housekeepers, nannies) who work more than 24 hours in a week for the same employer are entitled to seven paid statutory holidays a year. If work is performed on the holiday, another day off with regular pay must be given before the next annual vacation.

When a public holiday falls upon a working day for an employee, an employer may with the agreement of the employee or the employee's agent substitute another working day for the public holiday not later than the employee's next annual vacation.

When the holiday falls on an employee's non-working day or in her or his vacation, the employer may pay the employee the regular rate of pay for that day or substitute a working day not later than the employee's next annual vacation in lieu thereof.

An employee who works on a public holiday is entitled to not less than time and one-half for each hour worked plus the regular wages for that day. Work on a public holiday is not taken into consideration for calculating overtime in that week.

If an employee works in a hotel, motel, tourist resort, restaurant, tavern, continuous operation, or a hospital and is required to work and works on a public holiday, the employer shall pay the employee in accordance with the above, or pay the employee the regular rate for each hour worked and give to the employee a holiday on the first working day following her or his next annual vacation or on a working day agreed upon, and pay the regular wages for that day.

If employment ceases before a substituted day is taken, the employer shall pay to the employee the regular wages for that day.

Prince Edward Island

In Prince Edward Island, the employment standards legislation does not as yet provide for statutory holidays. Despite the lack of general legislation, the Labour Act does provide that a conference of representatives of employers and employees in a given trade in any area of the province may formulate and submit to the minister for approval a schedule establishing, among other conditions, any particular day or days or portion of any day on which work may not be performed, and the rates of pay if these days are worked. Such schedules were approved in 1969 for the electrical and for the plumbing, pipefitting and sheet metal trades, and in 1973 for the carpentry and construction industry. The minimum rates of pay for a holiday worked have long since been considered obsolete and are now set by various collective agreements or employment contracts. But the holidays listed in the charts are still observed.

Québec

An Act Respecting Labour Standards and the Regulation adopted under this Act provide for six statutory holidays with pay: January 1 and December 25 (fixed by the Act), and Good Friday, Dollard Day or the Queen's Birthday, Labour Day, and Thanksgiving Day (fixed by regulation). For employees working in a commercial establishment the employer is given the right to choose between Good Friday and Easter Monday.

An employee who is not required to work on a statutory holiday must be paid an indemnity equal to the average of his or her daily wages for the two weeks preceding that holiday. An employee who is required to work on one of these days must be paid regular wages for the work done plus an indemnity equal to his or her wages for a regular day of work or be given a compensatory holiday of one day. To benefit from a statutory holiday, an employee must be credited with 60 days of uninterrupted service and not be absent from work without the employer's authorization or without valid cause on the day preceding or following that holiday. These provisions do not apply to employees covered by a collective agreement or a decree containing at least six statutory holidays with pay in addition to the National Holiday (June 24).

The National Holiday Act establishes June 24, St. John the Baptist's Day, as a statutory public holiday.

If the holiday falls on a non-working day, the employee is entitled to a compensatory holiday equivalent to a regular day of work.

An employee must be paid the regular pay when he or she does not have to work on June 24. If an employee is required to work on June 24, he or she must be paid regular wages for the work done plus an indemnity equal to his or her wages for a regular day of work, or be given a compensatory holiday of one day.

The compensatory holiday must be taken on the working day preceding or following June 24. However, if at that time, the employee is on annual leave, the holiday is to be taken at a date agreed upon by the employer and the employee.

An employee must have been entitled to wages for at least ten days during the period from June 1 to June 23 to benefit from these provisions.

Saskatchewan

In Saskatchewan, the Labour Standards Act requires employees who do not work on any of nine public holidays to be paid their regular pay. For workers in the construction industry and in logging and lumbering, the order provides for payment of a lump sum in lieu of pay for the nine listed holidays. The nine holidays are New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Saskatchewan Day (first Monday in August).

When Christmas or New Year's Day falls on Sunday, the following Monday is to be observed as a holiday. When the Monday following Remembrance Day is declared a holiday, it is to be observed as a holiday under the order. By agreement between an employer and a trade union representing a majority of the employees in an appropriate bargaining unit, another working day may be substituted for any of the nine listed holidays. Where workers are not represented by a trade union, the Minister of Labour may by order permit a similar substitution, if satisfied that the employer and a majority of the employees are in favour of the change.

The order applies to all employees except teachers as defined in the School Act, employees employed in an undertaking in which only members of the employer's family are employed, employees in farming, ranching and market gardening (other than in egg hatcheries, greenhouses, nurseries, and brush-clearing operations), and handicapped workers in sheltered workshops.

If required to work on a holiday, employees in almost all workplaces must receive, in addition to their regular pay for the holiday, time and one-half the regular rate for every hour or part of an hour worked; in effect, two and one-half times their regular pay.

A major exception to the above rule is that workers in hotels, restaurants, hospitals, nursing homes and educational institutions who are required to work on a holiday must be paid, in addition to their regular pay, time and one-half the regular rate. Alternatively, these employees may be paid at the rate of one and one-half times their regular rate and be granted another day off with pay within four weeks.

Persons engaged in the operation of a well-drilling rig are required to be paid at their regular rate of wages, plus their normal pay for the day, for work performed on a holiday.

The order provides that, where an employee's wages, exclusive of overtime, vary from day to day, pay for a public holiday is to be calculated on the basis of the average daily wage, exclusive of overtime for the four immediately preceding days that bear the same name as the day on which the holiday occurs.

Workers in construction and in logging and lumbering who do not work on any of the nine specified holidays must be given holiday pay in a lump sum in an amount equal to 3.5 per cent of their gross wages for the calendar year, exclusive of overtime. Payment must be made on December 31 or on termination of employment, whichever occurs first. Where a majority of the employees in an appropriate bargaining unit are represented by a trade union, the union and the employer may, by agreement in writing, elect that the workers be paid regular wages for each holiday, instead of a lump sum payment.

Construction workers who work on the holiday must be paid, in addition to the lump sum payment, wages at the rate of time and one-half their regular rate for all time worked. The latter amount must be paid in the pay period in which it is earned.

Workers in the logging and lumbering industries who work on a public holiday must be paid regular pay for all time worked, in addition to the lump sum payment to which they are entitled.

The Territories

In both territories, employees are entitled to a holiday with pay in respect of each of the general holidays listed in the Act. Both acts provide for nine general holidays. In the Yukon Act, Discovery Day, is provided for. The first Monday in August is provided for in the Northwest Territories. The other general holidays, common to both territories are New Year's Day, Good Friday, Victoria Day, Dominion Day (called "Canada Day" in the Yukon), Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day. Another holiday may be substituted for any of the listed holidays.

The Yukon Act states that when a general holiday falls on a Sunday the Monday following is to be a holiday with pay.

The labour standards officer may allow another holiday with pay to be substituted for a general holiday if another holiday is specified in a collective agreement or, where there is no collective agreement, if an employer applies for a substitution and the majority of the employees agree.

In the Northwest Territories, an employee is entitled to a holiday with pay only when a general holiday falls on a regular working day. An employee who is required to work on a holiday must be paid at the regular rate plus one and one-half times the regular pay for the day, or must be given a holiday with pay at a time convenient to the employee and the employer, not later than the next annual vacation or on termination of employment, whichever occurs first. The Act does not apply to domestic servants in a private home, trappers and persons engaged in commercial fisheries, members or students of professions, managers or superintendents.

The Yukon Act requires payment of regular pay plus wages at the rate of time and one-half for the hours worked for work done on a holiday. This provision does not apply to custodial work or essential services as prescribed by regulations. A person employed in any such employment, in addition to the regular wages, must be granted a holiday with pay at another time in lieu of a holiday on which she or he was required to work, or be paid time and one-half regular pay.

In the Northwest Territories, an employee who is not required to work on a general holiday must not be required to work on another day of that week that would otherwise be a non-working day, unless the employee is paid at least double the regular rate of wages, and in the Yukon Territory at least one and one-half times the regular rate of wages for the time worked on that day.

The circumstances under which payment of holiday pay is not required differ in the two acts.

In the Yukon, an employee is not entitled to pay in respect of a holiday on which she or he does not work (a) if the holiday occurs in her or his first 30 days of employment with an employer, or (b) if the employee is not entitled to wages for at least 15 days in the 30 calendar days immediately preceding the holiday, or (c) if she or he has not worked an average of 24 hours a week during the four-week period immediately preceding the week in which the holiday falls (excluding any period of annual vacation), or (d) if she or he did not report for work on the holiday after having been called to work, or (e) if, without the employer's consent, she or he did not report for work on either the day preceding or the day following the holiday.

Under the Northwest Territories Act, an employee is not entitled to be paid for a holiday if she or he has not worked for his employer for at least 30 days in the preceding 12 months. Other exceptions are the same as in (d) and (e) above.

Other Legislation Dealing with Holidays

Provisions prohibiting work on specified public holidays except with a permit, stipulating that certain holidays must be observed as paid holidays, or requiring the payment of an overtime rate for work done on specified holidays, are regular features of the decrees under the Québec Construction Industry Labour Relations Act and Collective Agreement Decrees Act, and of industrial standards schedules in Alberta, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan. These provisions, while regulating a considerable portion of industry, particularly in Québec, apply only to certain trades and areas in the provinces concerned.

Several provinces have enacted legislation requiring retail businesses to remain closed on specified public holidays but the legislation does not require that employees be paid for days not worked as a result of the legislation.

Similarly, the Remembrance Day Acts of Manitoba and Nova Scotia, require November 11 to be a day of grateful tribute but does not require that employees be paid. If the holiday is worked, the employees to whom the Act applies are entitled to another day off with pay.

12. PAID GENERAL HOLIDAYS

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Pay for Holidays Worked
Federal Canada Labour Code and Labour Standards Regulations	New Year's Day Good Friday Victoria Day Dominion Day Labour Day Thanksgiving Day Remembrance Day Christmas Day Boxing Day	Regular pay. An employee who is not entitled to wages for at least 15 days during the 30 calendar days immediately preceding the holiday is entitled to 1/20th of the wages he has earned during those 30 days.	regular pay + 1½ times regular rate Continuous operations: regular pay + a) 1½ times regular rate, or b) another day off with pay, or c) pay for next non-working day
Alberta Employment Standards Act and Board Order No. 21	New Year's Day Good Friday Victoria Day Canada Day Labour Day Thanksgiving Day Remembrance Day Christmas Day	regular pay if holiday falls on regular working day for employee; construction industry: a lump sum is paid for general holidays	regular pay + a) 1½ times regular rate, or b) another day off with pay
British Columbia Employment Standards Act and Regulation	New Year's Day Good Friday Victoria Day Dominion Day Labour Day Thanksgiving Day Remembrance Day Christmas Day British Columbia Day	regular pay	1½ times regular rate + another day off with pay Continuous operations: regular pay + a) 1½ times regular rate, or b) another day off with pay

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Pay for Holidays Worked
Manitoba Employment Standards Act and The Remembrance Day Act	New Year's Day Good Friday Victoria Day Canada Day Labour Day Thanksgiving Day Christmas Day Remembrance Day*	regular pay; construction: 4% of gross earnings (excluding overtime) for year	regular pay + 1½ times regular rate; For Remembrance Day: a) twice regular pay or b) regular pay plus one day leave with pay Continuous operations, seasonal industry, place of amusement, gasoline service station, hospital, hotel or restaurant and domestic service: regular pay + equivalent compensatory time off with pay. Construction: 4% of gross earnings (excluding overtime) for year + 1½ times regular rate for days worked.
New Brunswick Employment Standards Act	New Year's Day Good Friday Canada Day New Brunswick Day Labour Day Christmas Day	regular pay	a) regular pay + 1½ times regular rate, or b) another day off with pay

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*In Manitoba, there is no requirement that employees be paid for the Remembrance Day holiday if they are not required to work.

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Pay for Holidays Worked d
Newfoundland Labour Standards Act	New Year's Day Good Friday Memorial Day Labour Day Christmas Day	regular pay	a) twice regular pay, or b) one full day holiday (paid) within 30 days, or c) add one full day (paid) to annual vacation
Nova Scotia Labour Standards Code and the Remembrance Day Act	New Year's Day Good Friday Dominion Day Labour Day Christmas Day Remembrance Day*	regular pay	regular rate + 1½ times regular rate Continuous operations: as above or another day off with pay.
Ontario Employment Standards Act	New Year's Day Good Friday Victoria Day Dominion Day Labour Day Thanksgiving Day Christmas Day	regular wages	Regular rate + a) 1½ times regular rate or b) another day off with pay When holiday falls on non-working day or a day of employee's annual vacation: another working day off with pay. Continuous operations, hotel, motel, tourist resort, restaurant, tavern or hospital: a) 1½ times regular rate or b) regular rate for each hour worked and another day off with pay.

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*In Nova Scotia, there is no requirement that employees be paid for the Remembrance Day holiday if they are not required to work.

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Pay for Holidays Worked d
Québec, National Holiday Act and Act Respecting Labour Standards and Regulations	January 1st Good Friday (or Easter Monday in certain cases) Dollard Day (or Victoria Day) National Holiday Labour Day Thanksgiving December 25	regular pay (or the average daily pay for the 2 weeks preceding the holiday)	A. regular pay + indemnity equal to his wages for a regular day of work; or regular pay + one day holiday taken within three weeks before or after that day (in the case of the National Holiday, the day off must be taken on the working day before or after June 24) B. when holiday falls on non-working day: another working day off or indemnity equal to the average of the daily wages for the two weeks preceeding that holiday
Saskatchewan Labour Standards Act and Regulations	New Year's Day Good Friday Victoria Day Dominion Day Labour Day Thanksgiving Day Remembrance Day Christmas Day Saskatchewan Day	regular pay Construction, lumbering and logging: lump sum Well drilling: regular pay Hotel, restaurant hospital, nursing home and educational institution: regular pay	regular pay + 1½ times regular rate Hotel, restaurant, hospital, nursing home and educational institution: regular pay + a) 1½ times regular rate, or b) time off equivalent to 1½ times regular rate + 1 day off at regular wage within four weeks Well drilling: regular pay + regular rate Construction: lump sum (3.5% annual gross excluding overtime) + 1½ times regular rate Logging and lumbering: lump sum (3.5% annual gross excluding overtime) + regular rate

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Pay for Holidays Worked[d]
Northwest Territories Labour Standards Act	New Year's Day Good Friday Victoria Day Dominion Day First Monday in August Labour Day Thanksgiving Day Remembrance Day Christmas Day	regular pay if holiday falls on regular working day	regular pay + a) 1½ times regular rate, or b) another day off with pay An employee who is not required to work on a general holiday, shall not be required to work on another day that would otherwise be a non-working day in the week in which the holiday occurs unless he is paid double time.
Yukon Territory Employment Standards Act	New Year's Day Good Friday Victoria Day Canada Day Discovery Day Labour Day Thanksgiving Day Remembrance Day Christmas Day	regular pay	A. regular pay + 1½ times regular rate B. Custodial work, continuous operations and essential services: regular rate + a) another day off with pay, or b) 1½ times regular pay C. An employee who is not required to work on a general holiday shall not be required to work on another day that would otherwise be a non-working day in the week in which the holiday occurs unless he is paid 1½ times regular rate.

INDIVIDUAL AND GROUP TERMINATION OF EMPLOYMENT

All Canadian jurisdictions, with the exception of the Northwest Territories, have legislation requiring an employer to give notice to the individual worker whose employment is to be terminated. Several of these provinces place an equal obligation on the employee to give notice to the employer before quitting a job.

In addition, the Parliament of Canada, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Quebec and the Yukon require an employer to give advance notice of a projected termination of employment or layoff of a group of employees.

The Canada Labour Code also provides for severance pay for employees with 12 months service or more. Ontario also has provisions regarding severance pay in the case of group termination of employment.

In 11 jurisdictions the legislation is part of the labour code: the Canada Labour Code, Part III, Divisions V.2, V.3 and V.4; the Alberta Employment Standards Act, Part III, Division 6; the British Columbia Employment Standards Act, Part 5; the Manitoba Employment Standards Act, Part III; the Newfoundland Labour Standards Act, Part VIII; the Ontario Employment Standards Act, 1974, Part XII; the Nova Scotia Labour Standards Code, Sections 68 to 74; the Prince Edward Island Labour Act, Part III; the Saskatchewan Labour Standards Act (1977), Part VII; sections 30 to 34 of New Brunswick's Employment Standards Act; and Part 8 of the Employment Standards Act of the Yukon. The provisions in Quebec governing individual notice are contained in the Act Respecting Labour Standards and the Civil Code; notice of group termination requirements are laid down in Section 45 of the Manpower Vocational Training and Qualification Act and a general regulation made under it.

The reference charts which follow in this section give the length of the notice required by "termination of employment" provisions under federal and provincial legislation.

FEDERAL

Individual Notice

Employees who have been continuously employed for three months or more are entitled to two weeks' notice of termination of employment or layoff. Regulations define circumstances in which notice is not required for layoff. In lieu of notice, the employer may pay an amount equivalent to two weeks' wages at the employee's regular rate for the regular hours of work.

The requirement to give notice does not apply when an employee is dismissed for just cause.

Where an employee continues to be employed for more than two weeks after the termination date specified in the notice, his or her employment must not be terminated, except with his or her written consent, unless notice is given again.

The Code takes into account the bumping provisions that may be contained in collective agreements. Where a collective agreement authorizes that an employee whose position becomes redundant may replace another employee on the basis of seniority, the notice requirement may be met either by giving at least two weeks' notice to the union and the employee and posting a copy of the notice in a conspicuous place in the establishment, or by giving pay in lieu of notice to the employee whose employment is actually terminated.

After notice has been given, wages and other conditions of employment must not be altered, except with the written consent of the employee. During the notice period the employee must be paid the regular wages for regular hours of work.

Group Notice

The Code requires that the employer give 16 weeks' notice of group dismissals to the Minister of Labour, in addition to any individual notice required, where the employment of 50 or more persons is to be terminated simultaneously or within a four-week period. Regulations may be made providing for advance notice where a smaller number of employees is being dismissed.

For the purpose of group dismissals, a layoff is equivalent to a termination, except in circumstances determined by regulations.

Superintendents and managerial employees are to be included in calculating the number of employees being dismissed. Regulations exclude employees from the group notice provisions when they are employed on a seasonal or irregular basis or under an arrangement whereby the employee may choose to work or not when requested to do so.

Advance notice must be given in writing to the Minister of Labour, with copies to the Employment and Immigration Commission, to the Minister of Employment and Immigration and to any trade union involved. Where there is no union, notice must be given to the employees being dismissed, either in writing or by the posting of a notice in the establishment.

The notice must state the anticipated date of dismissal and the estimated number of employees in each occupational classification whose employment is to be terminated. The regulations require that the notice also include the name of the employer and any trade union acting as bargaining agent, the location at which termination is to take place, the nature of the industry, and the reason for termination. In addition, the employer and trade union must provide the Employment and Immigration Department with whatever information it requests in order to assist the employees. Both are required to co-operate with that department in order to facilitate the re-employment of the dismissed employees.

The employer must also establish a joint planning committee consisting of at least four members, at least half of whom are representatives of the redundant employees. The object of this committee is to develop an adjustment program to eliminate the necessity for the termination of employment or to minimize the impact of such termination on the redundant employees, and to assist those employees in obtaining other employment. The employer and any trade union or redundant employees who appointed the members of the committee must co-operate with and assist the committee in developing an adjustment program. Accordingly, they must, at the request of any member of the committee, provide forthwith such personal information relating to any redundant employee as the committee may reasonably require for its work.

An inspector may monitor and, on request, assist in the establishment and operation of a joint planning committee, and may attend any meeting of the committee as an observer.

If, having completed the development of an adjustment program, the totality of the members representing one faction of the committee is not satisfied with the program or any part of it, or if an adjustment program has not been developed, these members can unanimously apply to the Minister for the appointment of an arbitrator to assist the committee in the development of a program, and to resolve any matters in dispute. An arbitrator may not, however, review the decision of the employer to terminate the employment of redundant employees, or delay the termination of their employment.

On completion of an adjustment program, the employer must implement it, and anyone concerned must co-operate and assist in implementing it.

The requirement to give group notice may be waived for an industrial establishment or specified group of employees by an order of the Minister of Labour if the Minister is satisfied that the requirement would be unduly prejudicial to the interests of the employees or the operation of the establishment, or that the requirement would not be necessary because similar measures to those provided for in the Code had been taken for the assistance of redundant employees.

A Canada Labour Standards Regulation defines industrial establishment for the purposes of group notice as any branch of an employer's business located in a regional division established under the Unemployment Insurance Act. Schedules outline what constitutes an industrial establishment for the CNR, CPR, Air Canada and CP Air.

Severance Pay

The Canada Labour Code requires an employer to give an employee who has completed 12 months of continuous employment severance pay upon termination of employment by the employer. The severance pay must be equivalent to two days' wages at the regular rate for regular hours of work for each completed year of continuous employment by the employer, or five days wages at the regular rate for regular hours of work, whichever is greater.

The employer is exempt from the severance pay provisions if, either before or immediately upon termination, the employee is entitled to a pension under a pension plan contributed to by the employer and registered in accordance with the Pension Benefits Standards Act. By the same token, the severance pay provisions do not apply if the employee is similarly entitled to a pension under the Old Age Security Act, or to a retirement pension under the Canada Pension Plan or the Quebec Pension Plan.

Special Provisions

The Canada Labour Standards Regulations define circumstances under which layoff is not considered termination of employment for purposes of individual and group notice and severance pay.

Notice is not required where the layoff is the result of a strike or lockout, is for a term of three months or less, or is made pursuant to provisions of a collective agreement.

In the following circumstances, a layoff of more than three months also does not constitute termination: where the employer notifies the employee that he or she will be recalled on a fixed date or within a fixed period of up to six months and the employee is actually so recalled; where, during layoff, the employee continues to receive payments from the employer in amounts mutually agreed upon, the employer continues to make payments to a pension plan, or the employee receives supplementary employment benefits or is entitled to do so; or where the term of the layoff is 12 months or less and the employee, all the while, maintains recall rights pursuant to a collective agreement.

Continuity for the purposes of group and individual termination, severance pay and maternity leave is not to be broken where an employee is absent from work because of a layoff that does not constitute termination or where the absence is permitted or condoned by the employer. Similarly, in determining the term of a layoff, when the layoff is for three months or less, or it is according to the circumstances enumerated in the paragraph above (except where an employee receives payments or an employer makes payments for the benefit of the employee), any period of re-employment of less than two weeks is not included.

If a collective agreement contains provisions that specify procedures by which may be negotiated and finally settled any matters relating to a collective dismissal, or which are intended to minimize the impact of such a dismisal and to assist the redundant employees in obtaining other employment, the provisions of the Code do not apply.

The provisions of the Code establishing a joint planning committee do not apply in circumstances where the collective dismissal is the result of technological change as defined by the Code.

ALBERTA

Individual Termination

The Employment Standards Act of Alberta requires employers to give employees written notice of termination, or pay in lieu of notice.

These requirements do not apply if the employee has been employed for less than three months; is employed in the construction industry other than as an office employee at the site; is employed for a definite term or task for a period not exceeding 12 months; is temporarily laid off or the employment is terminated for just cause; is laid off after refusing an offer of reasonable alternative work or refusing work made available through a seniority system; is on strike or locked out; is laid off and does not return to work within seven days after being requested to do so by his employer; is employed under an arrangement whereby he may elect to work or not to work for a temporary period; is at the age of retirement according to the established practice of the employer; is employed under a contract that has become impossible to perform or is frustrated by a fortuitous or unforeseeable event; is employed on a seasonal basis or is a brush-clearing employee.

A temporary layoff is defined as a layoff of less than 60 days, or more where the employee continues to receive wages or payment in lieu of wages in an amount agreed to by the employer and the employee, or the employer makes payments to a pension, employee insurance or similar plan.

General Provisions

After notice has been given, wages and other conditions of employment must not be altered. During the notice period the employee must be paid his regular wages for his regular hours of work.

Successive periods of employment with the same employer may be accumulated unless there has been a break of more than three months between employment.

Where an employee continues to be employed after the expiry of the notice period, the notice has no effect.

BRITISH COLUMBIA

Individual Notice

In British Columbia, an employer is required to give two weeks' written notice where an employee has completed at least six consecutive months of employment; after a period of employment of three consecutive years, one additional week's notice; and for each subsequent year an additional week's notice, up to a maximum of eight weeks.

In lieu of notice the employer may pay the employee severance pay equal to the period of notice required. Severance pay is defined as the greater of an employee's normal weekly wages or average weekly wages within the last eight weeks in which she or he earned wages.

These requirements do not apply when an employee has been discharged for just cause; is employed under an arrangement whereby he may elect to work or not to work for a temporary period; is employed for a definite term or to perform specific work which is to be completed within 12 months or less; is temporarily laid off; has been offered and has refused reasonable alternative employment, or is employed under a contract of employment that is impossible to perform due to an unforeseeable event or circumstance.

General Provisions

After notice has been given, an employer must not alter wages and conditions of employment without the consent of the employee.

On termination the employer must pay the employee all wages owed without delay. Where an employee is paid on a salaried basis the employer must pay the employee not less than the hourly equivalent of the salary for every hour of work for which he or she has not already been paid.

If a person continues to be employed after the expiry of the notice period, the notice has no effect.

Employees hired for a definite term to perform work which is to be completed within 12 months and continue to be employed for three months or more after the completion of the term or task are to be considered regular employees, and are entitled to notice of termination. The period of employment is deemed to have commenced at the beginning of the definite term or task.

If an employer temporarily lays off an employee and the layoff exceeds the period defined, the employee must be given severance pay in lieu of notice as if employment had been terminated without notice when she or he was first laid off. "Temporary layoff" is defined as: a layoff of not more than 13 weeks in any period of 20 consecutive weeks, or a layoff of more than 13 weeks where the employer recalls the employee within a time fixed by the director of employment standards.

If an employer has substantially altered a condition of employment and the Employment Standards Board is satisfied that the purpose was to discourage the employee from continuing in the employment, the board may declare that the employer has terminated the employee.

MANITOBA

Individual Notice

In Manitoba, an employer or employee in any work or occupation, except farming, must give notice of termination of employment and, except in the case of a person paid less frequently than once a month, the period of notice required is one regular pay period. If the employees are paid less often than once a month, reasonable notice must be given. Notice of termination is not required if an employee is hired for a fixed period unless the employment is, by mutual agreement, continued after the end of the period. Notice is also not required if the employment of an individual is terminated due to violent or improper conduct.

The requirements for giving notice do not apply if a general custom or practice prevails in an industry which is contrary to the terms of the Act or where different conditions concerning notice are established by collective agreement. If employment is terminated during an employee's first two weeks in a job, notice is not required unless the employer and employee have agreed in writing that the requirements of the Act will apply.

An employer is permitted to establish a practice whereby employment may be terminated with a shorter period of notice than that provided for in the Act, and the practice is considered to have been established one month after the employer has notified each employee in writing of the practice and has posted a notice setting out the terms of the practice. Each new employee must be informed of the practice by written notice at the time employment begins.

Complaints of failure to give the required notice may be made in writing to the Minister of Labour within a period of 90 days after employment is terminated. The Minister may inquire into it personally, or may refer it to the Labour Board for investigation. A procedure is laid down in the Act for the settlement of such complaints.

Group Notice

Manitoba requires that where 50 or more employees are to be dismissed within a period of four weeks, advance notice of group dismissal be given in writing to the Minister of Labour. The length of the notice increases with the number of employees involved. Copies must be sent to the certified or recognized union. Where there is no union, the notice must be given to the employees being dismissed, either in writing or by posting a notice in the establishment. The notice must mention the reasons for the termination as well as the names of not less than two persons who may be appointed to a joint planning committee to represent the employer. The Minister may require the establishment of such a committee, composed of at least two representatives of the employer and of the trade union or employees, to develop an adjustment program in order to minimize the impact of the termination and to assist the redundant employees in obtaining other employment.

Notice for group termination does not apply when the employees are: employed for a definite term or task of 12 months or less; laid off according to regulations[1], or after refusing reasonable alternate work offered by the employer or by a seniority system; laid off and do not return to work within a reasonable time after being requested to do so by their employer; on strike or locked out; employed in the construction industry; guilty of willful misconduct, disobedience or neglect of duty; employed under a contract that is or has become impossible to perform or is frustrated by a fortuitous or unforeseeable event; employed under an arrangement whereby they may elect to work or not to work for a temporary period; or at the age of retirement according to the established practice of the employer. The Minister may, by order, make exemptions to the provisions of the Act dealing with group termination, if the application of the provisions is unduly prejudicial to the interests of the employees or employer, or if it would be seriously detrimental to the industrial establishment.

After notice has been given, wages and other conditions of employment must not be altered, except with the written consent of the employee or if there is a collective agreement in force which authorizes changes or variations.

The employer may terminate the employment of an employee without notice if the employee is notified in writing to this effect and paid the equivalent of the wages he or she would have earned for working regular hours during the notice period, as well as any unpaid vacation pay to which the employee is entitled. The employer must pay such an amount where the employee had been laid off and, by virtue of the duration of the layoff or otherwise, that layoff has become a termination.

Any employee who wishes to terminate employment before the notice period expires must give written notice of such action to the employer.

The employer and the trade union representing the employees affected by the termination must co-operate with the Minister in any action or program aimed at facilitating the re-establishment in employment of the employees involved.

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[1] A layoff is not considered a termination of employment if (1) work in the industry is seasonal, and upon being hired employees are told they may be laid off and called back to work; or (2) the term of the layoff is eight weeks or less in any period of 16 consecutive weeks; or (3) the term of the layoff is more than eight weeks and the employer recalls the employee within the time or times specified by the Minister; or (4) the layoff is for more than eight weeks and the employee continues to receive payments in an amount agreed upon or the employer continues to make payments for the benefit of the employee to a pension plan or insurance plan.

NEW BRUNSWICK

Individual Notice

An employee not covered by a collective agreement is entitled to two weeks notice if he has been employed for a continuous period of employment of six months or more but less than five years, and to four weeks for five years or more. An employee covered by a collective agreement is not entitled to the norm fixed by the Act. Presumably in such a case, the notice of individual termination of employment is a matter that will have been settled in an agreement between the negotiating agent and the employer.

Group Notice

Notice of a collective dismissal, on the other hand, is only assured to those who are covered by a collective agreement. If more than 25 employees representing at least 25 per cent of the employer's workers are to be terminated within a four week period, the employer must give four weeks notice to the bargaining agent and to the Minister of Labour and Manpower. A copy of the notice must be posted for the employees' information. These provisions prevail over any less advantageous provisions contained in a collective agreement.

General Provisions

An employer can, however, lay off without notice a group of employees or an individual if there is a lack of work due to any reason unforeseen by the employer, for as long as the lack of work persists, and for any other reason, for a period of up to six days. The requirement to give notice does not apply: when the termination of employment is due to the completion of a definite task not exceeding 12 months; when an employee retires; if he works in the construction industry; or when the termination or lay off results from the normal reduction, closure or suspension of an operation.

In the case of an individual termination only, an employer may also terminate or lay off without notice an employee who has refused reasonable alternate work offered by the employer as an alternative to being terminated or laid off or when the employee is employed for a definite term, unless he continues to be employed for a period of three months beyond the date of expiry of the term. An individual notice of termination has no effect if the employee continues to work for the employer for one month or more beyond the end of the notice period.

The employer may terminate the employment of an employee or a group of employees without giving proper notice by giving payment, in lieu of notice, of an amount equal to the wages the employee would have earned during the notice period. If an employer defaults from giving proper notice, he is liable to the employee for the wages he would have earned during the notice period.

NEWFOUNDLAND

Individual Notice

In Newfoundland, both the employer and the employee are required to give notice of termination of employment.

The requirement for giving notice does not apply if a period of notice of termination is provided for in a collective agreement within the meaning of The Labour Relations Act, 1977, or in a written contract of service between the employer and employee. This exception applies only if the period of notice is the same for employers and employees.

Notice by the employer is not necessary when the employee has willfully refused to obey a lawful instruction of the employer or has committed misconduct; when the employer pays to the employee wages equal to the normal wages covering the period of notice; when the employee is laid off for a period not exceeding one week; when the employee is employed for a firm non-renewable term which does not exceed 12 months; when the employee rejects an offer by the employer of reasonable alternative employment; when the layoff is the result of a fortuitous or unforeseeable event; when the employee has reached the age of retirement, or when the contract of service between the employer and the employee has subsisted for less than one month.

There are also circumstances where notice by the employee is unnecessary: if the employer has mistreated the employee, or if the employee pays to the employer an amount equal to the amount that he or she would earn under the contract of service covering the period of notice, if the employee is employed for a firm non-renewable term which does not exceed 12 months, or if the contract of service between the employee and the employer has subsisted less than one month.

Provisions regarding individual notice of termination of employment do not apply to the construction industry.

Group Notice

Notice of group termination must be given to each employee when 50 or more employees are to be discharged or laid off within a four-week period. The notice period varies with the number of employees being dismissed. The Minister of Labour must be informed in writing of any group notice.

If the employer fails to give the required notice or to notify the Minister, the employer must not take any action to terminate the services of the employees.

This requirement does not apply in respect of employees whose contracts of service are for less than one month.

A layoff for a period not exceeding one week is not deemed a termination. Nor is it deemed a termination when it is for 13 weeks or less in any period of 20 consecutive weeks. Such a layoff is deemed temporary and, instead of group notice, employees affected are entitled to the individual notice of termination.

Notice of group termination does not apply to a contract of service that is or has become impossible to perform or is frustrated by a fortuitous or unforeseeable event; or after an employee has refused reasonable alternative work offered by the employer or a seniority system; or has been laid off and does not return to work within a reasonable time after being requested to do so by the employer; or is on strike or locked out; or is employed in the construction industry, logging or fishing; or is a specified seasonal employee; or is employed under an arrangement whereby the employee may elect to work or not to work for a temporary period; or is at the age of retirement according to the established practice of the employer.

General Provisions

A notice has no effect if the contract of service continues beyond the period of expiry specified, and must not include any period of vacation owing to an employee.

Any notice of termination may be made conditional upon the happening of a future event.

Once a notice of termination has been given, the employer cannot change an employee's rate of pay or any other condition of employment.

NOVA SCOTIA

Individual Notice

In Nova Scotia, the Code forbids an employer to discharge or lay off an employee who has been employed for three months or more, without first giving written notice in case of either individual or group termination.

An employee employed for three months or more must also give the employer notice before quitting a job, unless the employer has been guilty of a breach of the terms and conditions of employment. The notice period depends upon the length of employment:

3 months to 2 years . . .	1 week
2 years or more	2 weeks.

Group Notice

Notice of group termination must be given to each employee affected where ten or more employees are to be discharged or laid off during a period of four weeks or less. The notice period varies with the number of employees being dismissed. The Minister of Labour must be informed in writing of any group notice.

General Provisions

If a person continues to be employed after the expiry of the notice for a period exceeding the length of notice, she or he must be given notice again before employment may be terminated.

Successive periods of employment may be accumulated unless there has been a break of more than 13 weeks in employment, in which case the last period of employment is counted.

An employer must not alter wages and conditions of employment once notice is given, whether by the employer or employee, and must, upon the expiry of the notice, pay the employee all pay to which she or he is entitled.

Notice may be made conditional upon the happening of a future event, if the required notice period is observed.

An employer may terminate an employee's employment immediately upon giving notice if the employee is given pay in lieu of notice. This pay must be equivalent to the amount the employee would have earned at the regular rate in a normal, non-overtime workweek during the required notice period.

Notice of layoff is not required where a person is laid off for six consecutive days or less, or in circumstances defined by regulations. An employee who is not entitled to notice because of the duration of the layoff, and whose employment is subsequently terminated (by continued layoff or otherwise), must be given pay in lieu of notice as if employment had been terminated without notice when she or he was first laid off.

The requirement to give notice does not apply where the employee has been guilty of willful misconduct or disobedience, or willful neglect of duty that has not been condoned by the employer.

Persons employed for a definite term or task for a period of 12 months or less are not entitled to notice. However, if the person continues to be employed for three months or more after the completion of the term or task, she or he is to be considered a regular employee and, therefore, entitled to notice. The period of employment is deemed to begin at the commencement of the term or task.

In addition, persons discharged or laid off for any reason beyond the control of the employer are not entitled to notice if the employer has exercised due diligence to foresee and avoid the cause. Among these reasons are labour disputes, destruction of plant or machinery, unavailability of materials, cancellation or lack of orders, and actions of government authority.

Excluded also are persons who have been offered reasonable alternate employment by the employer or who have reached retirement age according to the established practice of the employer. Employees in the construction industry are excluded from the requirement both to receive and to give notice. Furthermore, regulations may exempt persons employed in any activity, business, work, trade, occupational profession or any part of these.

The length of notice does not include any week of vacation unless the employee agrees to take her or his vacation during the notice period.

ONTARIO

Individual Notice

In Ontario, an employer is required to give notice in writing to an employee whose employment is to be terminated, provided the employee has completed three months' service or more. The length of notice varies with the period of employment.

A period of employment constitutes the period between the time employment began and the time that notice was or should have been given. If an employee who has received proper notice has been offered temporary work for a period of up to 13 weeks or for such longer periods as the director authorizes following the date of expiry of the notice of termination of employment, this period of temporary work is added. Successive periods of employment may be accumulated, unless there has been a break of more than 13 weeks in employment. In such a case, the period of last employment constitutes the length of service for purposes of the notice.

Group Notice

The group notice requirement applies when an employer plans to terminate the employment of 50 or more persons within four weeks or less. The length of notice is related to the number of workers involved.

Where not more than 10 per cent of the persons employed in an establishment are to be dismissed in a four-week period, and these total 50 or more persons, the requirement for notice in the case of individual dismissal applies, unless the termination is caused by the permanent discontinuance of all or part of the employer's business.

Persons who have been employed for less than three months are not to be counted in determining the number employed in an establishment and are not entitled to notice.

Employees who have received notice of a collective termination of employment are required to give written notice to their employer that they intend to quit their jobs. One week's notice is obligatory for an employee who has worked for the employer for more than three months but less than two years, and two weeks' notice for one who has been employed for two years or more.

Severance pay, in the amount of one week's regular salary for each year of employment to a maximum of 26 years, is payable to every employee having accumulated at least five years' service when the employer terminates the employment of 50 employees or more within a period of six months.

General Provisions

A number of provisions are applicable to both individual and group notice.

Where notice is given, employment must continue until the notice has expired. The length of notice may not include any week of vacation, unless the person, after receiving the notice, agrees to take a vacation during the notice period. An employee who has been given proper notice may be given temporary work during the 13-week period after the date of expiry of the notice without requiring a further notice of termination. It is also possible, upon authorization from the director, to give additional periods of temporary work without needing further notice.

Under the legislation, the employer is required to give the prescribed notice or to pay the wage or salary equivalent. The employer terminating the employment of an employee without notice must notify her or him in writing to this effect and pay the equivalent of the wages the employee would have earned for working regular hours during the notice period. Compensation payable in lieu of notice is deemed wages for purposes of the Act.

The employer may be required by the Minister, for the purpose of facilitating the re-establishment of the dismissed workers in employment, to participate in any action or measure designed to that end, such as establishing, maintaining and contributing to the reasonable cost or expense of a special committee.

The employer is forbidden to alter the wage rate or any other term or condition of employment of a person to whom notice has been given, and upon the expiry of the notice must pay the wages and vacation pay to which the employee is entitled.

The Act covers layoffs other than "temporary layoffs", as defined. Notice of indefinite layoff is deemed to be notice of termination of employment.

A "temporary layoff" is defined as: (1) a layoff of not more than 13 weeks in any period of 20 consecutive weeks; (2) a layoff of more than 13 weeks where (a) the person continues to receive payments from the employer, (b) the employer continues to make payments for the benefit of the person laid off under a bona fide retirement or pension plan or under a bona fide group or employee insurance plan, (c) the person laid off receives supplementary unemployment benefits, or (d) she or he is entitled to receive supplementary unemployment benefits, but does not receive them because she or he is employed elsewhere during the layoff; or (3) a layoff of more than 13 weeks where the employer recalls the person within the time fixed by the director of employment standards.

The notice provisions do not apply to a person who is laid off or whose employment is terminated during or as a result of a strike or lockout at her or his place of work, or who has been employed for less than three months. Also exempted from the requirement to receive notice are: (1) a person who is laid off after (a) refusing an offer by the employer of reasonable alternate work, or (b) refusing alternate work made available through a seniority system; (2) a person on layoff who does not return to work within a reasonable time after being requested to do so by the employer; (3) a person employed under an arrangement such that she or he may elect to work or not for a temporary period when requested to do so; and (4) a person who has reached the age of retirement according to the established practice of the employer.

Employers engaged in certain shipbuilding activities are exempt from the notice of termination requirement in respect of any employee for whom supplementary unemployment benefits are provided, if the employee agrees to the exemption.

An employer is not required to give notice to a person employed for a definite term or task. However, if a term or task exceeds a period of 12 months or the person continues to be employed for three months or more after completion of the term or task, the notice provisions apply.

A person who has been guilty of willful misconduct, disobedience or willful neglect of duty that has not been condoned by the employer is not entitled to notice, and notice is not required where a contract of employment becomes impossible to perform or is frustrated by a fortuitous or unforeseeable event or circumstance.

Any notice of termination may be made conditional upon the happening of a future event.

An employee may terminate employment forthwith upon notice if the employer has been guilty of a breach of the terms and conditions of employment.

The construction industry has been exempted from the requirement to give notice. Other employers are covered, including the Crown and its agencies. Those entitled to notice include professional employees, teachers, commercial fishermen, domestic servants, farm workers and salesmen.

The regulations take into account the bumping provisions that may be permitted by the terms of employment. Where the terms of employment authorize that an employee whose position becomes redundant may replace another employee on the basis of seniority, the notice requirement may be met by posting a notice containing the salient facts in a conspicuous place in the establishment.

PRINCE EDWARD ISLAND

In Prince Edward Island an employer is forbidden to discharge or lay off an employee who has been employed continuously for more than three months without giving at least one week's written notice. On termination the employee is entitled to his or her actual earnings during the week or the normal wages for one week, exclusive of overtime, whichever amount is greater. If notice is not given, the employee is entitled to his or her normal wages for one week, exclusive of overtime.

The Prince Edward Island Labour Act also requires an employee with three months' service or more to give the employer at least one week's notice of his or her intention to terminate employment.

The requirement to give notice applies to all employees and their employers except farm workers, construction workers, tourist establishments operating less than six months in a year, and students employed during the period May 1 to October 1. In other circumstances notice is not required for dismissal for just cause, including shortage of work.

Any provision in a contract of service or recognized custom which grants more favourable termination provisions shall prevail over those provided for in the Act.

There is no requirement in legislation for group notice of termination of employment.

QUEBEC

Individual Notice

The Act Respecting Labour Standards provides that, except where a contract is for a fixed term or for a specific undertaking, an employee who is credited with three months of uninterrupted service with the same employer is entitled to a prior notice in writing before being dismissed, or being laid off for not less than six months.

This prior notice must be one week if the employee is credited with under one year of uninterrupted service, two weeks if he or she is credited with one to five years of service, four weeks if he or she is credited with five to ten years, and eight weeks if he or she is credited with ten years or over. These provisions do not apply in the case of executive officers.

Except in the case of grave fault of the employee or of a fortuitous event, an employer who fails to give prior notice must pay the employee, at the time of termination, an amount equal to the employee's wages for a period equal to the period of the prior notice.

At the expiry of the contract of employment, an employee may require the employer to issue a work certificate in which the following information, and only the following information, should appear: the nature and the duration of the employment, the dates on which employment began and terminated, and the name and address of the employer. The certificate must not mention the quality of the work or the conduct of the employee.

In Quebec, Section 1668 of the Civil Code requires a domestic servant, journeyman or labourer to give one week's notice of termination of employment if hired by the week, two weeks' notice if by the month, and a month's notice if by the year. The employer must give similar notice when an employee's services are no longer required.

Some decrees under the Quebec Collective Agreement Decrees Act also require the giving of notice of termination of employment.

Group Notice

Under section 45 of the Manpower Vocational Training and Qualification Act, an employer who, for technological or economic reasons, contemplates the dismissal of ten or more employees within a period of two months is required to give advance notice to the Minister of Labour and Manpower.

"Employee" does not include a seasonal or casual worker or a director or officer of a corporation.

The requirement to give notice does not apply to an employer in the construction industry or to an employer carrying on an undertaking of a seasonal or intermittent nature. The legislation does not apply to an establishment involved in a strike or lockout.

Layoffs are included in the term "dismissal" but the employer does not have to give notice if he or she lays off employees for an indefinite period of time, unless the layoff will continue for more than six months.

Where a fortuitous or unforeseeable event prevents an employer from giving notice, he or she must inform the Minister as soon as possible, and furnish proof that he or she was unable to comply with the law. The Minister will then determine, in consultation with the employer, the period of notice that must be given.

The notice, which must be mailed by the employer to the Manpower Branch of the department, and which becomes effective on the date of mailing, is to contain: (a) name and address of the employer or establishment; (b) nature of the principal product or service; (c) names and addresses of associations of employees (unions); (d) reasons for the collective dismissal; (e) date on which the collective dismissal will be made; and (f) full name of each employee likely to be dismissed.

The legislation also requires the employer, at the request of the Minister, to participate immediately in the establishment of a reclassification committee, whose task is to study and recommend practical measures for the re-establishment of the dismissed employees. The certified trade union, or the employees if there is no union, must be equally represented on the committee. The employer must contribute funds to the committee to the extent agreed upon by the parties. The Manpower Branch of the department is responsible for the establishment and functioning of such committees.

The parties may, with the Minister's consent and subject to conditions laid down by the Minister, establish a reclassification fund. If necessary, several employers and several certified trade unions may establish a joint fund.

SASKATCHEWAN

In Saskatchewan, except for just cause other than a shortage of work, an employer is forbidden to discharge or layoff without written notice an employee who has been in her or his service for three months.

On termination, the employee is entitled to her or his actual earnings during the period of notice or the normal wages for the period of notice, exclusive of overtime, whichever amount is greater. If notice is not given, the employee is entitled to the normal wages for the minimum required notice period, exclusive of overtime.

Should a provision in a contract of service, or a custom, entitle an employee to longer notice of termination or more favourable compensation, the provision shall apply.

If an employee's wages vary from week to week, the normal weekly wage is to be obtained by averaging the employee's earnings, exclusive of overtime, for the four-week period immediately preceding the date on which notice was given or, if no notice was given, the date of discharge or layoff. An employee must receive full pay from the employer within 14 days after termination.

If the employee has at any time been entitled to take an annual holiday under any act, custom or agreement, or under the contract of service, the employer shall within 14 days pay the employee, in addition to all other amounts due, her or his average wage for the period of employment between the dates on which she or he became entitled to the last annual holiday that she or he was entitled to take and the date of the termination of employment.

The requirement to give notice applies to all employees and their employers except farm workers and domestic servants. Also excluded are ranching and market gardening employees, certain handicapped persons and employees employed in family undertakings.

There is no requirement for group notice of termination of employment in Saskatchewan.

YUKON

Individual Notice

An employee who has completed six consecutive months of employment with the same employer is entitled to a notice of termination, in writing, of one week. If notice is not given, the employer must pay to the employee one week's wages at his or her regular rate of pay for his or her normal hours of work.

Similarly, an employee cannot terminate his or her employment without giving the same notice to the employer. Where an employee quits without proper notice, the employer has the right to, with the employee's consent, deduct from the wages due to the employee an amount equal to one week's wages. If the employee does not agree to such a deduction from his wages, the employer can pay that amount to the Director. The Director must investigate the matter and make one or more of the following orders: a) determining whether the employee was required to give notice; b) to repay the amount to the employer; or c) to pay the amount to the employee if the notice provision does not apply in that case or where it would be inequitable in the circumstances to deprive the employee of his wages.

The period of notice to which an employee is entitled under these new provisions cannot be permitted to coincide with the employee's annual vacation.

In addition, the Director is empowered to make orders requiring the employer to: a) comply with this Part; b) remedy or cease doing an act; or c) pay any wages lost by reason of the contravention.

Group Notice

The collective dismissal provisions provide that any employer who terminates, either simultaneously or within any period not exceeding four weeks, the employment of 25 or more employees, in addition to any individual notice of termination that is required, give notice to the Director. The period of notice varies with the number of employees being terminated. Specifically, it consists of: a) at least four weeks before the date of termination where 25 to 49 employees are involved; b) at least eight weeks where 50 to 99; c) 12 weeks where 100 to 299; and d) 16 weeks where 300 or more employees.

The Act provides that a four weeks' notice is required to be given to the Director where any employer, either simultaneously or within any period of four weeks, places a group of 50 or more employees on temporary layoff.

General Provisions

A distinction between a "temporary layoff" and a "termination of employment" is made. A "temporary layoff" consists of an interruption of an employee's employment for a period not exceeding 13 weeks in a period of 20 consecutive weeks, or could exceed 13 weeks where the employer recalls the employee to his service within a time fixed by the Director. A "termination" includes a layoff other than a temporary layoff, and an alteration of a condition of employment which, in the opinion of the Director, is intended to discourage the employee from continuing his or her service with the employer.

The notice provisions do not apply to the following employees: a) employees employed in the construction industry; b) employed in a seasonal or intermittent undertaking that operates for less than six months in a year; c) discharged for just cause; d) whose employer has failed to abide by the terms of the employment contract; e) on temporary layoff; f) employed under a contract that has become impossible to perform due to an unforseeable event or circumstance; or g) who has refused reasonable alternative employment offered by the employer. In addition, the individual notice of termination does not apply to unionized workers.

Finally, where an employer terminates the employment or lays off an employee who has been employed at a remote site, the employer will be obliged to provide free transporation to the employee to the nearest point at which regularly scheduled transportation services are available.

13. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT*

Jurisdiction and Legislation	Notice Required	Application to Employers	Application to Employees
Federal Canada Labour Code	2 weeks	Employers not required to give notice to employees employed less than 3 months.	Employees not required to give notice.
Alberta Employment Standards Act	Where employed at least 3 months but less than 2 years: 7 days. Where employed 2 years or more: 14 days.	Employers not required to give notice to employees employed less than 3 months, seasonal employees, construction workers other than office employees at the site, brush-clearing employees.	Employees not required to give notice.
British Columbia Employment Standards Act	Where employed at least 6 consecutive months: 2 weeks. After 3 consecutive years 3 weeks; thereafter one additional week for each additional year of employment up to a maximum of 8 weeks.	Employers not required to give notice to employees employed less than 6 consecutive months, B.C. Railway Company employees, construction workers, professionals, certain salesmen, students in certain approved work programs, students employed at school where they are enrolled, persons employed in a private residence solely to attend to a child, a disabled, infirm or other person, persons receiving income assistance while participating in an employment program, artists, musicians, performers or actors, student nurses and disabled employees of a charity receiving therapy or engaged in a therapeutic work program.	Employees not required to give notice.

*The Northwest Territories have no notice of individual termination of employment provisions.

Jurisdiction and Legislation	Notice Required	Application to Employers	Application to Employees
Manitoba Employment Standards Act	Where employed for more than 2 weeks: one pay period.	Employers not required to give notice to employees employed less than 2 weeks, professionals and students in professional training, domestic and agricultural workers, persons employed in fishing, fur farming, dairy farming and in rehabilitation or therapeutic employment.	Employees who are entitled to receive notice of termination are required to give notice.
New Brunswick Employment Standards Act	Where employed at least 6 months but less than 5 years: 2 weeks. Where employed 5 years or more: 4 weeks.	Employers not required to give notice to employees employed in the construction industry, to seasonal employees, to unionized employees, nor for various other reasons specified in the Act.	Employees are not required to give notice.
Newfoundland Labour Standards Act	Where employed at least 1 month but less than 2 years: 1 week. Where employed 2 years or more: 2 weeks.	Employers of employees in the construction industry or in certain professions not required to give notice.	Construction industry and professional employees not required to give notice.
Nova Scotia Labour Standards Code	Where employed less than 2 years: years: 1 week. Where employed 2 years or more but less than 5 years: 2 weeks. Where employed more than 5 years but less than 10 years: 4 weeks. Where employed 10 years or more: 8 weeks.	Employers not required to give notice to employees employed less than 3 months, teachers, construction workers, domestic workers, professionals or students in professional training, salesmen, agricultural workers, persons employed on fishing vessels.	Employees who are entitled to receive notice of termination are required to give notice.

Jurisdiction and Legislation	Notice Required	Application to Employers	Application to Employees
Ontario Employment Standards Act	Where employed less than 2 years: one week. Where employed 2 years or more but less than 5 years: 2 weeks. Where employed 5 years or more but less than 10 years: 4 weeks. Where employed 10 years or more: 8 weeks.	Employers not required to give notice to employees employed less than 3 months, certain employees in the shipbuilding industry, inmates of correctional institutions, offenders performing work under court orders, students in work experience programs.	Employees not required to give notice, only if they wish to leave after 1 week if employed less than 2 years and 2 weeks if employed more than 2 years, after having received a notice of termination of employment from their employer. This provision does not apply if the employer is guilty of a breach of the terms and conditions of employment.
Prince Edward Island Labour Act	Where employed for more than 3 months: 1 week.	Employers not required to give notice to farm labourers, employees of tourist establishments operating less than 6 months in any year, students employed between May and October, persons employed in the construction of roads, streets, sewers, pipelines, tunnels, bridges, and other such works.	Employees who are entitled to notice of termination must give notice.
Quebec Civil Code Labour Standards Act	Under the Civil Code notice must be given: where an employee is employed by the week: 1 week. Where an employee is employed by the month: 2 weeks. Where an employee is employed by the year: 1 month.	The Civil Code applies to employers of all employees.	All employees are required to give the notice set out in the code.

Jurisdiction and Legislation	Notice Required	Application to Employers	Application to Employees
Quebec Civil Code Labour Standards Act (continued)	Under the Labour Standards Act notice must be given where an employee has been employed for at least 3 months and less than 1 year: 1 week. Where an employee has been employed for at least 1 year and less than 5 years: 2 weeks. Where an employee has been employed for at least 5 years and less than 10 years: 4 weeks. Where an employee has been employed for at least 10 years: 8 weeks.	The notice period required of employers by the Labour Standards Act does not apply to certain agricultural workers, employees whose main duty is the care of a child or a disabled, aged or handicapped person if the work does not serve to procure a profit to the employer, workers in the construction industry, students enrolled in job initiation programs, certain contract workers; executive officers.	The Labour Standards Act does not require employees to give notice.
Saskatchewan Labour Standards Act	Where employed for at least 3 months and less than 1 year: 1 week. Where employed for at least 1 year and less than 3 years: 2 weeks. Where employed for at least 3 years and less than 5 years: 4 weeks. Where employed for at least 5 years and less than 10 years: 6 weeks. Where employed for at least 10 years: 8 weeks.	Employers not required to give notice to employees employed in farming, ranching or market gardening, domestic workers or handicapped employees of sheltered workshops and work activity centres.	Employees not required to to give notice.

Jurisdiction and Legislation	Notice Required	Application to Employers	Application to Employees
Yukon Employment Standards Act	Where employed for at least 6 months: 1 week.	Employers are not required to give notice to: a) construction workers; b) seasonal or occasional employees in an undertaking that operates for less than 6 months in a year; c) employees dismissed for just cause; d) employees whose employer has breached the employment contract; e) employees who are temporarily laid off; f) employees whose contract has become impossible to perform because of an unforseeable event; and g) employees who have refused reasonable alternate employment offered by the employer.	These provisions do not apply to unionized employees. An employee must give notice (or, in certain cases, give pay in lieu of notice) when they wish to terminate their employment.

14. NOTICE OF GROUP TERMINATION OF EMPLOYMENT*

Jurisdiction and legislation	Number of employees	Notice required	Copy of notice to	Other requirements
Federal Canada Labour Code and Canada Labour Standards Regulations	50 or more	16 weeks	1. Minister of Employment and Immigration 2. CEIC 3. trade union certified to represent the employees as bargaining agent 4. any employee not represented by a trade union or notice posted by the employer in a conspicuous place of the industrial establishment	Employer must co-operate with CEIC to facilitate re-establishment in employment. Employer responsible for establishing a joint planning committee to develop an adjustment program in order to minimize the impact of the termination and assist the redundant employees in obtaining other employment. The committee is composed of at least 4 persons, of which at least half are representatives of the employees. An arbitrator may be appointed to help the committee develop such a program and to resolve any contested matter. A layoff is not deemed to be a termination when: it is the result of a strike or lock-out (even one in another establishment if it forces the employer to reduce his operations); the layoff is mandatory pursuant to a provision of a collective agreement; it is for a term of 3 months or less; it is for more than

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*Alberta, British Columbia, New Brunswick, Prince Edward Island, Saskatchewan and the Northwest Territories have no provisions regarding notice of group termination of employment.

Jurisdiction and legislation	Number of employees	Notice required	Copy of notice to	Other requirements
Federal Canada Labour Code and Canada Labour Standards Regulations (cont'd)				3 months but the employee is given notice that he will be recalled within 6 months of the beginning of the layoff; it is for more than 3 months but the employee continues to receive payments from his employer, the employer continues to make payments to a pension or an insurance plan, the employee receives supplementary unemployment benefits or is entitled to them but is disqualified pursuant to the Unemployment Insurance Act, 1971; or the layoff is for more than 3 months but not more than 12 and the employee maintains recall rights pursuant to a collective agreement. With reference to the 3-month periods mentioned above, any period of re-employment of less than 2 weeks is not to be included.
Manitoba Employment Standards Act	50-100 101-300 over 300 The Act lists several exclusions.	10 weeks 14 weeks 18 weeks Notice in writing to Minister of Labour.	1. any trade union certified to represent the employees, or recognized by the employer as bargaining agent 2. individual employees not represented by a union or posted by the employer in a conspicuous place in the establishment	The notice must mention the reasons for the termination as well as the names of not less than two persons who may be appointed to a joint planning committee to represent the employer. The Minister may require the establishment of such a committee, composed of at least two representa-

Jurisdiction and legislation	Number of employees	Notice required	Copy of notice to	Other requirements
Manitoba Employment Standards Act (cont'd)				tives of the employer and of the trade union or employees, to develop an adjustment program in order to minimize the impact of the termination and to assist the redundant employees in obtaining other employment. After notice is given, the employer may not change conditions of employment or wage rates except with written consent of employees or if a collective agreement authorizes the change. Employees who wish to terminate employment before expiry of notice must notify the employer in writing. A layoff is not deemed a termination when: it is customary, during that period of year, to layoff employees because of the seasonal nature of the industry and the employee has been advised, upon being hired, that he may be laid off; it is for a term of 8 weeks or less in any period of 16 consecutive weeks; or it is for more than 8 weeks and the employer recalls the employee within the time specified by the Minister or the employee

Jurisdiction and legislation	Number of employees	Notice required	Copy of notice to	Other requirements
Manitoba Employment Standards Act (cont'd)				continues to receive payments from the employer or the employer continues to make payments to the employee's pension or insurance plan.
New Brunswick Employment Standards Act	25 or more if they represent at least 25% of the employer's work-force.	4 weeks Notice to the bargaining agent and to the Minister of Labour and Manpower.	Copy must be posted for the information of all employees.	These provisions apply only to employees who are covered by a collective agreement. A notice is not required where there is a lack of work due to an unforeseen reason, nor for a layoff for a period of up to 6 days.
Newfoundland Labour Standards Act	50-199	8 weeks	Minister of Labour and Manpower must be notified and informed of the reasons for termination.	Where an employer fails to give the required notice to individual employees and to the Minister within the time prescribed, no action may be taken by the employer to terminate the services of the employees. A layoff for a period not exceeding one week is not deemed a termination. A layoff is not deemed a termination when it is for not more than 13 weeks in any period of 20 consecutive weeks. Such a layoff would be deemed temporary and would require that, instead of the group notice, the individual notice of termination be given to each employee.
	200-499	12 weeks		
	500 or more whose contracts of service have subsisted for more than one month. The Act lists several exclusions.	16 weeks Notice in writing to each employee whose employment is to be terminated.		

Jurisdiction and legislation	Number of employees	Notice required	Copy of notice to	Other requirements
Nova Scotia Labour Standards Code	10-99 100-299 300 or more whose period of employment is more than 3 months. The Code lists several exclusions.	8 weeks 12 weeks 16 weeks Notice in writing to each person whose employment is to be terminated.	Minister of Labour must be informed in writing of any notice given.	After the notice is given, the employer may not alter the rates of wages or other conditions of employment of a person to whom notice has been given. A layoff or suspension of 6 consecutive days or less is not deemed a termination.
Ontario Termination of Employment Regulation under the Employment Standards Act, 1974	50-199 200-499 500 or more who have been employed for more than 3 months. The Act lists several exclusions.	8 weeks 12 weeks 16 weeks Notice in writing to each person whose employment is to be terminated.	Minister of Labour must be notified in writing.	Where bumping is permitted by the terms of employment, the employer may post a notice in a conspicious place listing the person to be terminated, his or her seniority and job description and setting forth the date of termination. The posting of the notice is considered a notice of termination as of the day it is posted. A layoff is not deemed a termination when: it is for not more than 13 weeks; or it is for more than 13 weeks but the employee continues to receive payments from the employer, the employer continues to make payments to the employee's retirement savings or

Jurisdiction and legislation	Number of employees	Notice required	Copy of notice to	Other requirements
Ontario Termination of Employment Regulation under the Employment Standards Act, 1974 (cont'd)				pension plan or insurance plan, or the employee is entitled to supplementary unemployment insurance but does not receive it because he is employed elsewhere during the layoff; it is for more than 13 weeks but the employee is recalled within the time fixed by the Director of Employment Standards. For a week to count, the employee must have earned less than 50% of his normal wages during that week. Severance Pay: when 50 or more employees are terminated within 6 months or less, those who have been employed five years or more by the employer are entitled to one week's regular wages (exclusive of overtime) in respect of each year of employment to a maximum of 26.
Quebec Manpower Vocational Training and Qualification Act and Regulation	10-99 100-299 300 or more	2 months 3 months 4 months to the Minister of Labour and Manpower.	The notice must be posted at the Manpower Branch.	Upon request of the Minister, an employer must immediately take part in the establishment of a committee on reclassification of employees. No employer shall make a collective dismissal during the delay which follows the notice.

Jurisdiction and legislation	Number of employees	Notice required	Copy of notice to	Other requirements
Yukon Employment Standards Act	25-49 50-99 100-299 300 or more	4 weeks 12 weeks 16 weeks to the Director of Employment Standards.		Group notice is in addition to any individual notice required. 4 weeks notice to the Director is required where an employer, within any period of 4 weeks, places a group of 50 or more employees on temporary layoff. A layoff is temporary if it is for not more than 13 weeks in a period of 20 consecutive weeks, or for more than 13 weeks where the employer recalls the employees within a time fixed by the Director. Where an employer terminates or lays off an employee who has been employed at a remote site, the employer must provide free transportation to the nearest point at which regularly scheduled transportation services are available.

THE RECOVERY OF UNPAID WAGES

Introduction

In dealing with labour standards, the employees' rights and the employers' obligations can almost always be translated in terms of money. The minimum obligations imposed on employers by Labour Standards Acts are most often payment obligations: minimum wages, overtime pay, vacation pay, general holiday pay, termination pay, etc. The claimants, in circumstances where any given obligation has not been respected by their employer, undoubtedly have what the courts call "a pecuniary interest in the case". Such an interest is considered a prerequisite by the courts in determining whether claimants have the right to institute an action. These minimum payment obligations that the legislators have imposed on the employers are accompanied by other measures destined to protect the employee's most important right: the right to be paid. The legislators have thus provided, in addition, mechanisms for the prompt recovery of unpaid wages and created a high priority for employees' pay claims.

The employment relationship being basically a contractual one, the traditional remedy is to obtain payment through a civil action, as that of a creditor claiming before the courts payment of a debt previously contracted by a defaulting debtor. The advent of the labour standards legislation somewhat altered that concept: not only have legislators provided a more expedious and less costly statutory recourse for the recovery of unpaid wages, but such a recourse may even preclude access to a civil action if a specific provision excludes it. In Canada, most jurisdictions that have statutory recourses also have specific provisions preserving the availability of the civil action. In Nova Scotia and in Prince Edward Island, the civil action is not preserved nor excluded, but the legislation provides a definite recourse for the enforcement of the statutory obligations. In consequence, the civil action in these provinces is not available for the enforcement of the statutory obligations of the employment standards legislation until the statutory remedy has been exercised to its full extent. In the other jurisdictions, where access to either the statutory recourse and the civil action is preserved, the civil action and the statutory remedy are alternative means of recovering unpaid wages or enforcing statutory obligations and as such would be, under most circumstances, mutually exclusive. The aggrieved employee has the choice of one or the other, but not both. However, where the statutory recourse is limited to a certain amount ($4,000 in Ontario, $2,000 in Prince Edward Island or to twice the minimum wage the employee would have earned during the period the employee was not paid for work accomplished in Québec), the civil action becomes complementary to the statutory recourse. The employee retains the right to exercise himself, if necessary, his recourse before the civil courts for that part of the claim for wages which exceeds the limit of the statutory recourse. With regard to this, however, it is important to note that most provinces (i.e. Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Saskatchewan and the Yukon) have established a recourse that may be used to recover not only the minimum wage, but all wages due and owing, including salaries, pay, commission and any compensation for labour or personal services.

The legislative provisions establishing the statutory recourse usually empower inspectors or labour standards officers to inquire or investigate into situations where there is reason to believe that the law has been violated. In general, after having endeavoured to do so, if they cannot arrive at an amiable settlement with the parties, they are empowered to order the contravener to "cease and desist" and to order that compensation be made to the victims.

CANADA

Under the Canada Labour Code, inspectors can be appointed by the Minister for the purpose of enforcing Part III as well as the regulations. They may exercise certain powers of inspection and investigation, the most important of which are: their right to enter at any reasonable time any place of business in order to examine and take extracts from or copies of all books, payrolls and other records that in any way relate to the conditions of work affecting any employee, as well as their power to administer oaths and take affidavits. Employers and employees are obliged to assist the inspector, furnish full and correct statements, as well as make full disclosure of all pertinent information. If the inspector's findings reveal that an employer has failed to pay an empoyee in conformity with the minimum statutory obligations, the inspector may determine the amount still due. If the employer and employee agree in writing to the difference so determined, the employer must pay that amount within five days.

An employer who does not provide the minimum standards set out in the Code is also guilty of an offence and is liable upon summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or both. More severe sanctions exist for the failure to observe notice of termination provisions. The convicting court is empowered, in addition to any other penalty it may impose, to order the employer to pay the employee arrears of wages and such other minimum amounts required by the Code. Only the Attorney-General's Office may, upon a complaint, decide to prosecute in accordance with these provisions.

ALBERTA

In Alberta, when the employer does not pay the wages owing, the basic recovery scheme is as follows:

The employee may make a written complaint to a labour standards officer concerning unpaid wages, overtime pay, entitlements (i.e., vacation pay, general holiday pay and pay in lieu of notice of termination) or maternity benefits. The officer may mediate between the parties and attempt to resolve the matter amiably. For this purpose, he may receive from the employer and pay to the employee the money agreed on by the parties in settlement of their differences, as well as do any other thing necessary in order to come to an accord.

If the officer is convinced that the claims of the employee are legitimate and he is unable to mediate, settle or compromise a difference between the parties, he may, if the limitation periods have not expired, issue an order specifying the amounts due. Such an order, once filed with the clerk of the Court of the Queen's Bench of the proper district (this may be done only after the time allowed for an appeal has expired or after all appeals have been unsuccessful), is enforceable as a judgment of that court.

If, on the other hand, the officer is of the opinion that the employee is not entitled to wages, overtime pay, entitlements or maternity benefits as claimed, he must serve the employee a written notice of his decision.

The employee may, within 15 days, appeal the dismissal of his recourse to the director, who may assign another officer to review the case or review the matter personally. The decision taken upon review cannot be appealed to an umpire. An employer wishing to appeal the officer's order, must, within 15 days of the date of service on him of a copy of that order, appeal to an umpire by serving on the director written notice of appeal. The notice of appeal must be accompanied by the lesser of the following amounts: a) the amount ordered to be paid in the labour standards officer's certificate; or b) $300 for each employee in respect of whom an order was made. On hearing the appeal, the umpire may confirm, vary or revoke the order of the officer. He may also substitute it for one the officer could have made. The umpire's order is final and binding. If such an order is not complied with, it may be filed with the clerk of the Court of the Queen's Bench, in which case it will be enforceable as a judgment of that court. Provision is made to enable the director to pay money received in accordance with an order filed with the clerk of the Court of the Queen's Bench.

Third Party Demands or the Attachment of Third Party Debts is an alternative method for recovering unpaid wages offered under the Employment Standards Act. This consists in intercepting debts owed to the employer in the hands of third parties (debtors of the employer) in order to pay wages earned by the employees. The director of employment standards may issue a demand and serve it to a person who is or is about to become indebted to the employer, or is about to pay a sum of money to the employer when he knows or has reason to believe that an employer has failed or is likely to fail to pay wages, overtime pay, entitlements or maternity benefits to an employee. The demand must be for a specified amount with respect for the money owed or likely to be owed to the employer by the third party. The demand constitutes a debt owed by the third party to the director, recoverable by civil action. Such a debt is discharged if the third party pays the sum required to the director, if the director's demand is revoked or if the employer pays his employees' in accordance with the demand.

When the money is received from the third party notice is given that the director will proceed, on expiry of the employer's delay to lodge an appeal to the umpire, to apply the amounts received to the amounts claimed as unpaid wages, overtime pay, entitlements or maternity benefits, any balance remaining to be remitted to the employer. The employer has 15 days to lodge his appeal.

The Employment Standards Act also stipulates that: "An employee has a priority over the claims and rights of (a) preferred, ordinary or general creditors, (b) the Crown or an agent of the Crown, and (c) any other person having a claim against an employer, for an amount of wages, overtime pay and entitlements due and owing the employee by an employer for an amount not exceeding $5 000".

This provision, which creates a first priority for wage claims, is a valid application of the provinces' exclusive jurisdiction over the regulation of "power of sale" and foreclosure. It, like many other similar provincial provisions, means that wage earners have priority over all creditors, except the secured ones. The priority, it appears take effect only from the time an order made pursuant to the application of the Act is filed in the Court of the Queen's Bench. Once the sheriff has begun the sale of the debtor's assets for the benefit of an execution creditor, the wage earner who has neglected to file his order would not take priority over that creditor.

In addition, this type of provision cannot receive application in an instance of bankruptcy, insolvency or receivership. In such cases, the federal Bankruptcy Act or Winding-Up Act would supersede any provincial measure, and would provide the order of priority, these matters falling under the federal's exclusive legislative domain.

When an order of an officer or umpire is filed in the Court of the Queen's Bench, the director may also register a copy of the order in all or any of the following: (a) a land titles office against real property of the employer in respect of whom the order is made or against property in which the employer has a legal or equitable interest; (b) the Central Registry under the Chattel Security Registries Act against the personal property of the employer in respect of whom the order is made; (c) the office of the Registrar of Corporations. Note that it is the director's prerogative to register a copy of the order, and not the wage earner's.

Such a registration creates a secured charge in favour of the director, on behalf of the employees, on the real or personal property, as the case may be, of the employer for the amount of wages, overtime pay or entitlements in respect of which the order was issued.

The wages, overtime pay or entitlements secured in such a manner have priority over any other claim or right, secured or unsecured, against the employer, including a claim or right of the Crown, as well as priority over (a) every assignment, including an assignment of book debts, whether absolute or otherwise, (b) every mortgage or charge on real or personal property, (c) every security and debenture, and (d) every lien or charge created by a statute, whether stated to be a preferential lien or charge or not, that is registered, made, given, accepted or issued after the date this secured charge is created by registration.

A fine of up to $10 000 can be imposed on a corporation guilty of an offence (i.e., ignoring or contravening the provisions of the act or an order made pursuant to it), as well as a further fine of up to $5 000 on each of the directors and officers of that corporation, or imprisonment for up to six months if they fail to pay the fine. An individual employer or employee or other person who is guilty of an offence is also liable to the same sanctions faced by directors and officers. The convicting court may, in addition to any other penalty, order the employer to pay the wages owing to his employees.

BRITISH COLUMBIA

In British Columbia, when a complaint is made that an employer has defaulted from making any installment of wages within the last six months, an investigation is conducted. If an officer is satisfied that wages are owed and that no other proceeding has been started and continued, he may try to arrange payment directly to the employee. If unable to resolve the matter amiably, he may issue an order of non-payment. The officer's order is submitted to the director either for confirmation or for review, where the employer applies for it within eight days of receiving copy of the order. The employer must, in such a case, deposit $100 or a sum equal to 10% of the amount referred to in the order, whichever is greater. On completion of the review, which is conducted in a manner the director considers appropriate, the director must confirm, vary or cancel the order. In the latter case, the deposit is returned to the employer. The director may file in court a certificate thus issued. Such a certificate is enforceable as a judgment of the court in favour of the director.

Unpaid wages set out in a certificate constitute a lien, charge and secured debt in favour of the director, dating from the time that the wages were earned, against all the real and personal property of the obligor, including money due or accruing due to the obligor from any source. This lien, charge and secured debt is payable and enforceable in priority over all liens, judgments, charge or any other claims or rights including those of the Crown in right of the Province as well as priority over: (a) an assignment of book debts, whether absolute or otherwise and whether crystallized or not; (b) a mortgage of personal property; (c) a debenture on personal property, whether crystallized or not; and (d) a contract, account receivable, insurance claim or proceeds of a sale of goods, whether they were made or created before or after the wages were earned and became due. However, such a lien, charge and secured debt has priority only over a mortgage of land, or a debenture, charging land that was registered in a land title office after registration against that property of a certificate of judgment obtained pursuant to the filing in a court of the director's certificate.

The Employment Standards Act also empowers the director or his authorized representative where he has reason to believe that a person is likely to become indebted to an obligor, to demand in writing that, from out of the money payable by the third party to the obligor, be paid the amount stated in the certificate to the director to the extent that it covers the obligor's liability. If this demand is not honoured and the third party is in fact indebted to the obligor, the director may apply to their full extent the recovery provisions of the Act against that person. If a person on whom a demand is made denies the indebtedness, information necessary to establish that fact may be required by the director or his authorized representative. Where the indebtedness is established, the person must pay the money to the director either within 15 days of the date of service of the demand or within 15 days of when the money was owed, whichever is later. This demand may be issued to a bank, credit union or trust company holding money for the person who owes the unpaid wages.

When a certificate is issued, the director may seize assets owned or in the possession of or used in or incidental to the business of the person owing wages, to the extent necessary to satisfy the amount owed by him. Assets owned by a person other than the obligor may be released from seizure by the director.

No person, other than the director or his authorized representative may remove, damage or dispose of seized assets. Anyone who does, commits an offence. That person also becomes, in addition to any other penalty, liable for the amount of unpaid wages set out in the certificate.

The director may apply to their full extent the recovery provisions of the Act against that person.

MANITOBA

In Manitoba, the Payment of Wages Act provides for a basic recovery scheme similar to the one in force in Alberta. The major difference between them is that the director's functions can be delegated to his deputy (or deputies). When a complaint is made to the director, it is in fact referred to the Division. When an investigation is undertaken by the director, it is in effect the Division who conducts it. The director may require the employer, even before he has determined whether or not the employer is indebted to the employee, to remit to the director, part or all of the money allegedly owing. Where an employer refuses to comply, he is guilty of an offence and liable upon summary conviction, to a fine not exceeding $500. Since the orders are issued by the director, there is automatic review of an officer's findings and recommendations. When an employee or employer wish to dispute those findings, they must request within seven days after the order is issued that the matter be referred to a board of inquiry. An appeal lies to the Court of Appeal for any final order or decision of the board upon any question involving the jurisdiction of the board or upon any point of law.

When the delay for appealing either the director's order or the board's decision is expired the director may file a copy of it in the Court of the Queen's Bench and thereupon the order is enforceable as a judgment of that court in favour of the director.

Under the Employment Standards Act, the Manitoba Labour Board can hold enquiries for the purpose of discovering employment situations which are intended to have, or have, the effect of defeating the purpose and intent of this Act. With respect to this, the Board may make an order declaring that, for the purposes of this Act, such of those persons as are specified in the order are employees and that such are employers. The Board, with the approval of the Minister, may also hold enquiries respecting any matters arising out of the operation or administration of the Act, and report its findings to the Minister.

The Employment Standards Act requires the payment of wages at a rate not less than that of the prescribed minimum wage and a prosecution for contravening, or neglecting, omitting or failing to observe that requirement may be instituted at any time within one year of the date of the alleged offence.

Manitoba's law goes much further than just establishing a basic recovery scheme. The following describes that province's provisions for trusts, liens, bonds, etc., as well as the "Payment of Wages Fund", unique in Manitoba.

Under the Vacations with Pay Act accrued vacation pay is deemed to be held in trust by an employer for his employees.

Under the Payment of Wages Act, wages due or accruing due to an employee are deemed to be held in trust for payment of the wages over to the employee in the manner and at the time provided by law, whether or not the employer is in receivership, and whether or not the amount is kept separate and apart by the employer.

To secure payment of the wages kept in trust, an employee has a lien and charge in the amount of those wages on the assets of the employer that in the ordinary course of business would be entered in the accounts, whether so entered or not.

Pursuant to section 47(a) of the Bankruptcy Act, trusts are not part of the employer's assets and cannot be included in the mass to be shared by the bankrupt's creditors.

The Payment of Wages Act also provides that the amount of wages due and payable to an employee not exceeding $2 000 constitutes a lien and charge on the property and assets of the employer in favour of the employee and is payable in priority to any other claim or right, including those of the Crown, and that priority extends over every encumbrance, assignment, including an assignment of book debts, whether absolute or otherwise, every debenture and other security, whether registered or not, made, given, accepted or issued before or after the coming into force of this Act, except that this priority does not extend over any previously registered mortgage and a perfected money security interest.

Where pursuant to this Act the director files an order for payment of wages in a County Court and that order has been deemed to be a judgment of that court, the judgment constitutes a lien on the property and assets of the employer named in the order, in favour of the director and has the same priority as mentionned above.

The director also has the option to (a) file a caveat on behalf of the employee in the appropriate land titles office alleging that the employee claims an interest in the land affected by the caveat by virtue of the provisions of this Act; and/or (b) file a financing statement in The Personal Property Registry completed in accordance with the regulations made under The Personal Property Security Act.

Upon the filing of the caveat or a certificate of judgment, the interest of the employee has the same priority as a judgment with respect to a bona fide agreement for sale of land or option to purchase land. On the other hand, the filing of the financing statement gives the employee's interest the same priority as discussed above.

The Minister may, where he deems it advisable, require an employer to furnish to him security in the form of a bond with one or more sureties in such amount and subject to such conditions as may be prescribed. Where it is found that the employer has become indebted to any of his employees, the Minister may apply the proceeds of the bond towards the payment of the unpaid wages.

Under the Payment of Wages Act, it is an offence to refuse to furnish such security when requested to do so, and the employer, upon summary conviction is liable to a fine not exceeding $500. Moreover, the Minister may apply to the Court of the Queen's Bench to have an order issued prohibiting the employer from carrying on business in the province until he has furnished the security requested.

Under the Employment Standards Act, where an employer has been convicted of an offence with respect to the failure to pay wages or the failure to pay wages at a rate required under this Act or the Construction Industry Wages Act, the Minister may order the employer to deposit with the Minister of Finance cash or bond or other security in such sum not exceeding $1 000 to be available for settlement or any judgment or order of a court for wages; and if the employer employs any person in order to start his operations before posting that cash, bond or other security, he is guilty of an offence.

As a last resort, when all reasonable and necessary efforts have been made to collect the unpaid wages and all appropriate procedures under the Payment of Wages Act have been utilized, if part or all wages ordered to be paid remain unpaid, the Minister of Finance, on the requisition of the director, shall pay out of "The Payment of Wages Fund" the wages owing. In any calendar year, each employee can thus be paid an amount not exceeding $1 200, notwithstanding the number of claims an employee may have in that year. Where any amount in respect of unpaid wages is paid out of the fund, the director is thereupon vested with all the rights of the employee to take such action or institute any proceedings against the employer in law to recover the amount of unpaid wages so paid. If the director is successful in obtaining repayment from the employer, the amounts recovered must be deposited in the fund.

All acts mentioned in this part contain provisions that declare the non-payment of wages, especially after an order has been issued by virtue of the powers conferred by one of these acts, an offence. Most of them, but not all, contain also specific provisions permitting the convicting court to order the payment of the wages due, as well as imposing the various fines to which an individual employer or a corporation and its' directors are liable. Individual employers are usually also liable to a term of imprisonment not exceeding three months.

NEW BRUNSWICK

In New Brunswick, the Employment Standards Act, proclaimed into force December 1, 1985 for the substantial part, provides a new administrative recourse.

For the purpose of ensuring that the provisions of this Act and the regulations are complied with the director and employment standards officers are invested with certain powers of inspection, investigation and examination of working conditions in the province. They may, between the hours of nine a.m. and four p.m. enter any office or premises to require production of relevant books and documents and remove them to make copies or extracts. They can also require an employer to provide other needed information and take depositions. Moreover, any person who believes that there has been a violation of the Act or has been denied a right or benefit may, within 12 months after the alleged violation or denial, make a complaint to the director.

The director can, at any time after a complaint has been made, appoint a mediator to attempt to settle the matter amiably. If the parties reach an agreement, the director may issue an order setting out the terms and conditions of the agreement, as reported by the mediator. Such an order has the same effect as another order of the director. If the parties do not reach an agreement, the mediator must report the impass to the director, but must not report to the director, nor reveal to anyone, any communications or information that were made or given during the mediation process. The mediator cannot, upon completion of his mediation role, participate in any way in any subsequent investigation into the complaint.

Where the director is satisfied on reasonable grounds that a peson has not complied with the Act or the regulations he may order the person to refrain from acts that violate the Act, to comply with it, to pay a stated amount owing to an employee, or to reinstate an employee. A person against whom such an order is made may, within ten days after the order has been served, make a written request that the matter be referred to the Employment Standards Tribunal for review. A hearing before the Tribunal is arranged and the director becomes the party responsible to present a case in support of any decision or order he has made. The Tribunal may require the employer to furnish security in the form of a bond of $2 000 before proceeding to deal with any matter referred to it at the employer's request. Where the Trubunal concludes that the employer has defaulted to pay his employees' wages, it may, on ten days' notice to the employer and the sureties, realize upon the bond and apply the proceeds towards payment of the debt.

Where an employer has requested to be exempted from parts of the Act in accordance with section 8 and the director has referred the matter to the Tribunal or where a matter has been submitted to it for review in accordance with the above, the Tribunal may issue an order: a) confirming the decision or order of the director; b) vacating the decision or order and substituting it with one the director should have made; or c) remitting the matter to the director for further investigation, with such directions as the Tribunal considers appropriate. The Tribunal must render this decision in writing and give the motives for decision. The decision of the Tribunal is final and may be appealed only on a point of law.

The order of the director or of the Tribunal, as the case may be, may warrant that a certificate be issued stating the amount owing to an employee. The certificate may be filed in the Court of the Queen's Bench and be enforced as a judgment of that Court. The responsibility for filing and enforcing a certificate is primarily the director's. However, this does not limit the right of any interested person to file and enforce it.

Where a complaint is received by the director and he has reason to believe that a person is or is about to become indebted to the employer for any sum of money, the director may, even before he has determined whether or not the employer owes an employee wages, serve an attaching order on that person requiring him to pay to the Tribunal part or all of the money owing, likely to be owed or about to be paid by him to the employer. This money is held in trust by the Tribunal until determination is made by the director or the Tribunal whether or not the employer is indebted to an employee for unpaid wages. In the affirmative, the Tribunal must pay over the amount of unpaid pay and give any surplus back to the employer.

Under a provision not yet proclaimed, it would be possible for the Minister, after all reasonable efforts have been made to obtain payment from the employer and money remains owing, to pay to the employee, from a special "payment of wages fund", the amount to which he is entitled. The Minister would then become subrogated to all the rights of the employee against the employer to recover the amount thus paid. Moreover, the Minister could issue a certificate naming the employer and stating the amount for which the employer is liable to the Province. This certificate, once filed in the Court of the Queen's Bench, would become enforceable as a judgment of that Court.

The Act also makes it an offence to fail or refuse to comply with an order of the Tribunal. In addition to the fine and term of imprisonment that may be imposed upon summary conviction, the convicting court may order that an amount be paid to satisfy in whole or in part the amount of unpaid wages.

NEWFOUNDLAND

In Newfoundland, the basic recovery scheme under the Labour Standards Act is as follows:

The director of labour standards or any designated officer may, under the control and supervision of the Minister, hear representations and complaints that any provision of the Labour Standards Act is not being complied with, conduct investigations, make determinations with respect to the complaint and make written intimation of such determination to those who are in breach of the Act. If the matter is resolved in this manner, the director or his designated officer may accept from employers unpaid wages due and payable to employees, and remit the sums so collected to them. The director or a designated officer may also prosecute, under the

Summary Proceedings Act, offenders of this Act after having obtained the consent of the Minister of Justice.

Within three years of the happening that gave rise to the cause for action, the Labour Standards Tribunal may consider, review, hear and decide any matter falling within the scope of the Act that has been referred to it by the director, by a person aggrieved by a determination of the director or by any person alleging a breach of any provision of Parts 1 to 14 of the Act. The director may refer to the Tribunal any complaint immediately upon receiving it as well as any question arising out of the investigation or following the investigation. An appeal by an aggrieved person may not be made until the director has made a determination on the matter. The application for review must be made to the Tribunal within 15 days after the date of such determination.

Any person affected and aggrieved by any order, finding or decision of the Tribunal may, within 30 days of the date of receipt of a copy of it, appeal the order, finding or decision on a point of law or mixed fact and law to a judge of the District Court within the territorial limits in which the appelant resides or carries on business. All papers and documents in the possession of the Tribunal affecting the matter must be produced before the judge prior to the hearing of the appeal. The judge hearing the appeal may uphold, rescind or vary the order of the Tribunal, and award costs.

A person to whom unpaid wages are due and owing has first priority and claim over the claims of all creditors of the employer, including claims of the Crown, to the extent of $2 000 if written notice of the claim has been given to the director. When payment of all unpaid wages is made, the employee must again notify the director.

Despite its apparently clear meaning, this provision probably does not allow employees to take priority over secured creditors when these actions are taken because the courts are not likely, unless the legislator has made it unequivocally clear, (by enumerating the categories over which they have priority) to give wage earners priority over any category of secured creditors. It would confer to claims for unpaid wages preferred status, however.

Moreover, such a provision would probably never find application in cases of bankruptcy and insolvency. Both these matters fall within the exclusive jurisdiction of the Parliament of Canada and the provisions of the federal Bankruptcy Act and Winding-Up Act would supersede it in case of conflict.

With regard to execution creditors, this provision does not give the wage earner absolute priority over them either. If the sheriff has begun to realize funds from the sale of the debtor's assets, the wage earner's claim becomes secondary to the claims of execution creditors. The only circumstance in which employees do take priority, in consequence, is when their claims become known and established before the sheriff realizes any funds from the sale of assets seized by execution creditors.

Penalties (i.e., fines and imprisonment) are imposed upon persons convicted of an offence under the Act. They vary according to whether they apply to a person or a corporation. Upon a second conviction, the fines or the term of imprisonment are doubled automatically. The convicting court must also order that person or corporation to comply with the order of the Tribunal pertaining to the payment of wages due. Such an order may be enforced against the employer as if it was a judgment of the Supreme Court of the province in a civil action and execution may follow by filing the order with the registrar of that Court.

NOVA SCOTIA

Where, within the preceding six months, an employer in Nova Scotia has failed or refused to pay to an employee any vacation pay, termination pay or wages earned or becoming due and payable, the employee may make a complaint to the director of labour standards. The director, or his designated representative, must inquire into the complaint and endeavour to effect a settlement. The director may also act on his own initiative and inquire into the matter, or have another designated person inquire, where he has reasonable grounds to believe that there has been a failure to comply with the Code. Proceedings must begin within 30 days, otherwise the complaint may be heard directly by the Tribunal.

Where the contravention concerns benefits to which employees are entitled or obligations that they are subjected to under the Code, the director may order in writing the contravening employer or employee to comply with the provisions of the Code and rectify or compensate an injury caused by them. But where the contravantion concerns unpaid wages, termination pay or vacation pay, the director has no choice but to order the employer to pay over to the Labour Standards Tribunal by a specified date the amount found to be unpaid and advise him of his right to appeal, within ten days of service, the order to the Tribunal. The dismissal of a complaint by the director after an investigation has been made may also be appealed. If no appeal is filed, the director's order is deemed to be an order of the Tribunal. This confers to the order a very high priority against the assets of the employer, as we shall see further.

The Tribunal, in determining any matter under the Code, will decide whether or not a party has contravened it and will make an order in writing. Where a contravention is found that concerns a benefit or an obligation as above, the same procedure applies. Similarly, where the complaint concerns unpaid wages the Tribunal must order the employer to pay over to the Tribunal by a specified date the amount of pay found to be unpaid.

Any party to an order or decision of the Tribunal may, within 30 days of the mailing of the order or decision, appeal to the Appeal Division of the Supreme Court of Nova Scotia on a question of law or jurisdiction, but not on a question of fact. The parties in any proceeding before the Tribunal are: (1) the director, if he has been implicated from the start; (2) the person alleged to have failed to comply with the Code; (3) the complainant, if any (and if his identity may be divulged); and (4) any other person specified by the Tribunal upon such notice as the Tribunal may determine, provided that at the hearing he is given an opportunity to be heard against his joinder as a party. The practice and procedure in relation to such an appeal are the same as upon an appeal from the Trial Division of the Supreme Court. The Tribunal may state a case in writing for the consideration of the Appeal Division on any question that, in the opinion of the Tribunal, is a question of law. The Appeal Division will hear and determine the question(s) of law presented and remit the matter to the Tribunal for judgment. The judgment thus becomes, for the purpose of its enforcement, an order of the Tribunal.

Where a complaint is received by the director concerning unpaid wages and there is reason to believe that a person is or is about to become indebted to the employer for any sum of money, or is about to pay money to the employer, the director may order him to pay to the Tribunal part or all of the money owing, likely to be owed or about to be paid. A person to whom such an order is directed must comply with the order or incur criminal liability for breach of statute. The money received by the Tribunal is held in trust for the employer and the Tribunal may, after completion of the investigation pertaining to the existence of a debt for wages and the expiry of the delay for the employer to apply to the Tribunal for a hearing, distribute the amount over wages owing and pay the employer any surplus remaining.

An order of the Tribunal made to determine any matter under the Code constitutes a lien and charge in favour of the Tribunal for the amount set out in the order and that amount is a debt due or accruing due to the Tribunal by the employer and the Tribunal is deemed to hold a mortgage on the assets of the employer to the amount set forth in the order and may enforce the mortgage by foreclosure proceedings. The lien and charge shall be payable in priority over all liens, charges or mortgages of every person in respect of the real or personal property of the employer, including those of the Province, but excepting liens for wages due to workmen by that employer.

Before proceeding to deal with an appeal by an employer of the director's order, the Tribunal may require an employer to furnish to it security in the form of a bond with one or more sureties acceptable to the Tribunal in an amount not exceeding the total pay found by the director to be unpaid. Such a bond must state that it is payable to the Tribunal where there is no appeal to the Appeal Division of the Supreme Court after 30 days from the date of the service of the order of the Tribunal or where an appeal to the Appeal Division has been determined and any proceedings arising from it have been concluded.

A person who does anything prohibited by the Code or who refuses or neglects to do anything required by the Code is guilty of an offence and is liable, except where another specific penalty is provided, on summary conviction to a penalty of not more than $100 and on default of payment to imprisonment for not more than 50 days.

A person who fails to comply or violates an order of the Tribunal is guilty of an offence and liable on summary conviction for every day during which the offence continues, where the person is an individual, to a fine not exceeding $500 or to imprisonment for not more than 90 days or to both, and where the person is a corporation, to a fine not exceeding $1 000.

In a prosecution under this Code, the act or omission of any manager, superintendent or of any other person who exercises management functions for the employer is deemed to be the act or omission of the employer, unless it is proven that it was committed without the knowledge or consent of the employer.

No prosecution for an offence under the Code can be instituted without the consent in writing of the Minister.

Every employer is deemed to hold vacation pay accruing due to an employee in trust and the amount is a charge upon the assets of the employer or his estate in his hands or the hands of a trustee and has priority over all claims.

The amount of vacation pay is also a debt due or accruing due by the employer to the employee and the latter is deemed to hold a mortgage on the assets of the employer and may enforce it by foreclosure proceedings. This mortgage is payable in priority over all liens, charges or mortgages of every person in respect of the real and personal property of the employer, including those of the Province, but excepting liens for wages due to workmen by that employer.

ONTARIO

Where an employment standards officer finds that an employee is entitled to any wages from an employer, he may do one of several things. When the matter can be resolved amiably, he may arrange with the employer payment of the wages due directly to the employee or receive from the employer on behalf of the employee any wages to be paid as the result of a compromise or settlement. When the matter cannot be resolved amiably, he may issue an order in writing to the employer to pay forthwith to the director in trust any wages, up to the sum of $4 000 plus the amount of the employee's severance pay, if any, to which an employee is entitled and such an order must provide in addition for payment by the employer to the director of a penalty of 10 per cent of the wages or the sum of $25, whichever is the greater. In even more difficult situations, the officer may report to the director that an employer may have failed to pay the wages owing to an employee under this Act. The director may then appoint a referee selected by him (from the panel of referees appointed by the Minister) who must hold a hearing respecting the matter.

The employment standards officer may also, following a complaint in writing by an employee, find that an employer has paid the wages owing to the employee and refuse to issue an order. Upon refusing to do so, he must advise the employee of the refusal by prepaid letter addressed to the employee at his last known address. An employee who considers himself aggrieved by the refusal may apply in writing for a review to the director within 15 days of the mailing of that letter. The director will refer the matter to another employment standards officer who may exercise any of the powers described above. Another refusal entails the issuing of another letter of notice by the officer and leaves the employee with no other choice but to pursue his claim before the civil court of competent jurisdiction.

An employer who considers himself aggrieved by an officer's order may, upon paying the wages ordered to be paid and the penalty thereon, within 15 days after delivery or service of the order, apply to the director for a review of the order by way of a hearing. A referee will be selected by the director and the hearing will be heard as soon as is practicable. The parties will be the employer, as the applicant and the employment standards officer as well as such other persons specified by the referee, if any, as the respondents. The referee may, on a review, substitute his findings or opinions for those of the employment standards officer and may amend, rescind or affirm the order. In the difficult situations where the director has referred a matter to him, the referee must issue a cease and desist order to a person contravening the Act or defeating the true intent and purpose of the Act and order what action, if any, the person shall take or what he shall refrain from doing in order to comply with this Act and the regulations. A decision of the referee on a review is final and binding upon the parties as well as upon any other parties as the referee may specify. Every employer or person to whom a cease and desist order is given must comply with it in accordance with its terms, and such an order is not open to review.

Where an order has been made under this Act requiring an employer to pay money to the director for or on behalf of employees, the director may issue a certificate of order and file it in a court of competent jurisdiction. The certificate, once filed, becomes enforceable as a judgment or order of that court in favour of the director. A copy of the certificate, indicating the date it was filed, must be sent by the director to the employer by registered mail.

Where the director has knowledge or suspects that a person is or is about to become indebted and liable to make any payment to an employer in default, he may demand, by registered letter or letter served personally, that the person pay directly to him in trust, in whole or in part, the money otherwise payable to the employer. A person having discharged his liability to the employer without complying with the director's demand is liable to pay again the lesser of the amount of his debt to the employer or of the demand issued to him by the director.

Every person who contravenes any provision of this Act or the regulations or a decision, requirement or order made under the Act is guilty of an offence and liable on conviction to a fine of not more than $10 000 or to imprisonment for a term of not more than six months or both. The convicting court must, in addition to any other penalty, assess the amount of unpaid wages due to employees and order to pay that amount to the director who must collect and distribute it. Such an order may be filed by the director in a court of competent jurisdiction and thus will be deemed to be an order of that court for the purpose of enforcement.

Moreover, where a corporation contravenes the provisions of the Act, there is a presumption that the officers, directors or agents of the corporation authorized, permitted or acquiesced in the contravention and any one of them who does not prove that he did not do so is deemed to be a party to and guilty of the offence and is liable on conviction to the penalty provided for that offence whether or not the corporation has been prosecuted or convicted. The officers, directors or agents of the corporation may, in addition, be ordered to pay the amount assessed by the convicting court to be unpaid to the director who is to collect and distribute it to the employees.

Under the Employment Standards Act, every employer is deemed to hold vacation pay accruing due to an employee in trust for the employee whether or not the amount is kept separate and apart by the employer and the vacation pay becomes a lien and charge upon the assets of the employer that in the ordinary course of business would be entered in the books of account whether so entered or not.

PRINCE EDWARD ISLAND

In Prince Edward Island, where an employer has failed to pay an employee the amount of wages he is due and any vacation pay to which he is entitled, the inspector of labour standards must determine the amount to which the employee is still entitled. Notice of that determination is given to the employer and the inspector may require the employer to pay to him in trust no later than at a specified date any unpaid wages, overtime pay or vacation pay not exceeding $2 000 owing to an employee as determined. Thus, in Prince Edward Island, the inspector may determine any amount to be unpaid wages and give notice of it to the defaulting employer, but he can order the employer to pay no more than $2 000; he would exceed his jurisdiction in requiring the employer to pay any more to him.

Where the inspector has collected unpaid wages, overtime pay or vacation pay, the employer may, within 15 days of the date of the notice, appeal to the Employment Standards Advisory Board for a review of the determination of the inspector.

The Board must review the matter at a hearing, give the employer and employee full opportunity to present evidence and make submissions, determine the amount, if any, owing to the employee and order that any amount found to be owing to the employee be paid directly to him.

Where no appeal has been made to the Board, the inspector must pay to the employee all money collected on his behalf.

A person to whom unpaid wages are due and owing by an employer has priority over the claims or rights of the Crown of all preferred, ordinary or general creditors of the employer to the extent of $2 000. The secured creditors are subjected to no alteration of their rights under this provision. Wage earners simply come first in priority to all preferred creditors to the extent of $2 000, the residue of their claim, if any, ranking as an ordinary claim.

In addition to this priority for wages, an employee's vacation pay is deemed to be held in trust. Every employer is deemed to hold vacation pay accruing due to an employee in trust for payment over in the manner and at the time provided under the Labour Act, and the amount is a charge upon the assets of the employer or his estate and has priority over all other claims, including those of the Crown.

A person who wilfully delays or obstructs the Board, the inspector or any other official in the exercise of any of their duties, furnishes false or misleading information, fails to comply with any order, schedule, notice or requirement under this Part of the Act or contravenes any provision of this Part is guilty of an offence and on summary conviction is liable to a fine of not less than $100 and not more than $1 000.

The provincial judge entering a conviction must, in addition to any other penalty, assess the amount of wages or vacation pay still unpaid and order the employer to pay that amount to the inspector who is to collect and distribute it to the employees.

The order of the convicting court to pay the wages owing may be filed in the office of the County Court of the district in which the order was made and the order is deemed, from the date of filing, to be a judgment of that court for the recovery of a debt in the amount specified.

No prosecution for an offence under this Part may be instituted without the consent in writing of the Board.

QUÉBEC

In Québec, the right to institute a civil action for the recovery of unpaid wages is maintained intact: no provision of the Act respecting Labour Standards prohibits it. In fact, the statutory remedy is structured so that it makes use of the civil action. The recourse for the recovery of wages is thus always taken before the civil court. It may be instituted directly by the aggrieved employee, but the "Commission des normes du travail" may intervene at any time in an action relating to the Act or a regulation. In addition, the Commission may under certain conditions institute in its own name and on behalf of an employee proceedings to recover amounts due by the employer under this Act or a regulation, or intervene in its own name and on behalf of an employee in proceedings relating to the insolvency of the employer.

The Commission may begin by making an inquiry of its own initiative. Alternatively, an employee who believes that one of his rights under this Act has been violated may file a complaint in writing with the Commission. If an employee is subject to a collective agreement or a decree, he must then prove to the Commission that he has exhausted his recourses arising out of that agreement or decree. The inquiry, whether it originates from the Commission's decision or from an employee's resolve to pursue the matter, must follow certain specified rules of procedures.

Depending on the results or findings of the inquiry, the Commission may decide to reject the complaint or put the employer in default to pay the amount the Commission considers to be due. The Commission thus will refuse to proceed with an inquiry if it finds that the complaint is frivolous, groundless or made in bad faith. In any such case, it must issue a notice of its decision to the employee by registered mail, together with the reasons for decision. The employee may then apply to the courts himself for remedy.

Where the Commission considers that an amount of money is in fact due to an employee, it will put the employer in default to pay that amount within 20 days of the mailing by registered mail of such notice. A copy must also be sent to the employee.

Once an employer is put in default, he cannot validly discharge the amounts forming the object of the claim except by remitting them to the Commission. However, this provision does not apply if the employee has instituted an action himself.

The Commission may take the appropriate action on behalf of the employee if he fails to inform the Commission of his intention to proceed himself at the expiry of those 20 days.

According to a provision not yet in force, if the employer fails to pay that amount within 20 days, the Commission could of its own accord, but in conformity with certain criteria to be established by regulation, pay an amount equivalent to the minimum wage to the employee. The Commission would then become substituted in all the rights of the employee up to the amount thus paid.

When the Commission exercises either of the recourses described in the two preceding paragraphs, it is empowered to claim, in addition to the amount due under this Act, an amount equal to 20% of such claim. This additional amount belongs entirely to the Commission.

In every case where the Commission acts on behalf of the employee in claiming from the employer unpaid wages, it cannot exercise the claim for a greater amount than what the employee would have been entitled to for the same period if he had been entitled to twice the minimum wage in force on each day he worked. The employee retains the right to exercise himself, if necessary, his recourse for that part of his wages which exceeds the amount thus claimed by the Commission.

The unpaid wages that may make up the employee's claim cannot have been owed for more than a year preceding the time the civil action has been instituted. However, that limitation period may be interrupted for six months by the mailing, by registered mail, of a notice of inquiry sent by the Commission to the employer. The prescription may also be interrupted by the discovery of a fraud during the Commission's inquiry into the registers and books of the employer. In such a case, the prescription runs against the Commission's recourse only from the time of the discovery.

The recourses of several employees against the same employer may be joined in the same suit, whether it is instituted by the employees or by the Commission, and the total amount claimed determines the jurisdiction of the court, both in first instance and in appeal. It is to be noted that Québec's Small Claims Court is never competent to hear a claim based on this Act or a regulation: indeed, the claim arising out of the inexecution of a statutory obligation cannot be considered a "small claim" under the terms of section 953 of the Code of Civil Procedure.

Again in accordance with a provision not yet in force and following certain criteria to be established by regulation, the Commission would become empowered to compensate out of its funds an employee for the whole or part of the loss of wages or of any other pecuniary benefit accruing to him under this Act, where his employer has become bankrupt or insolvent and an assignment is made under the federal Bankruptcy Act or a winding-up order is made under the federal Winding-Up Act. The Commission would then become subrogated in all the rights of the employee up to the amount so paid.

Penal proceedings may be brought against the employer following provisions of the Summary Convictions Act by the Attorney General or his authorized representative. Various fines and penalties may be imposed on employers, or on directors, officers, agents or even employees of a corporation who have in any way colluded to the perpetration of an offence. The failure to pay an employee his wages constitutes an offence punishable by the imposition of a fine of $200 to $500, and, for every subsequent offence within two years, of $500 to $3 000. Penal proceedings must be instituted within one year after the Commission has become aware of the offence.

The fines collected pursuant to a judgment belong to the Commission.

Where an employee or the Commission has succeeded in obtaining a judgment in his favour, the procedures of general application for the enforcement of that judgment available under the Code of Civil Procedure or the Summary Convictions Act are available to them. Among them is the judicial seizure of moveable or immoveable assets belonging to a defaulting debtor to satisfy the execution of a judgment.

SASKATCHEWAN

In Saskatchewan, where the director, or any other person designated by the minister, has knowledge or has reason to believe or suspects that an employer has failed or is likely to fail to pay wages as required by this Act and is of the opinion that it is in the best interest of one or more employees to take action to recover wages on behalf of the employees, he may issue a certificate showing the amount of wages that in his opinion is owed or will become owing by the employer. The certificate may be filed by the director in the office of the local registrar of the Court of the Queen's Bench and, for the purpose of enforcement, such certificate will be entered as a judgment of that court in favour of the employees against the employer named in it for the amount stipulated.

When such a certificate is filed, the director must send to the employer and employees named in it a notice setting out all its details, where it was filed and when, as well as a mention that the employer and any employee may dispute or disagree with any amount shown within 14 days of service of the notice.

Where the employer or any employee disputes or disagrees with the amount of wages that is shown in the filed certificate, they may, within 14 days after having been served with the notice, apply to a judge of Her Majesty's Court of Queen's Bench for Saskatchewan sitting at the judicial centre nearest to the place where the employer carries on business and where the certificate is filed to have the amount of the wages shown reviewed. Such an application is done by motion, notice of which is served on the minister, the respondent and on such other persons as the judge may direct. The judge's order on the matter determines the amount of unpaid wages due and owing and amends accordingly the director's certificate. No appeal of the judge's order is permitted.

The amount of wages shown in the certificate in respect of the employees named in it must be paid by the employer to the director and the receipt of the director is a good and sufficient discharge of his liability to the extent of the amount shown in the receipt.

The costs of any action taken by the director to recover wages on behalf of an employee are first deducted from any amount thus received and the director must pay the remaining money on a pro rated basis to the employees entitled to it.

In the case of any dispute respecting wages, the employer must give written notice to the employee of the amount admitted to be due, and he must pay unconditionally forthwith that amount to the employee.

In the event of a stoppage of work as a result of an industrial dispute, the full amount of wages of an employee unpaid at the time of the stoppage is due on the next regular pay day. If the director is satisfied that the employer is prevented from paying wages due to factors beyond his control, he may authorize the employer to pay them on another specified day.

Except in certain circumstances, an employer can bring and maintain an action, suit or other proceeding against an employee for goods, wares or merchandise voluntarily purchased by him while employed by that employer. The employer can, in addition, deduct from time to time any amounts payable to him in respect of a sale, delivery or supply of such goods, wares or merchandise directly from the employee's wages. The employer can also, in response to an action brought against him by an employee for the recovery of unpaid wages, set off against, or claim in reduction of, the employee's demand any amount due to him by the employee in respect of a voluntary purchase of goods, wares or merchandise.

Where the director has knowledge or has reason to believe or suspects that an employer has failed or is likely to fail to pay wages to an employee and that a person is or is about to become indebted to the employer for any sum of money or is about to pay to the employer a sum of money, he may direct that person to pay directly to him part or all of the money owed or likely to be owed to the employer. If that amount is a specified one, that person must pay to the director the lesser of the amount of indebtedness or amount specified, if he was indeed indebted at the time of receipt of the director's order or fully pay and satisfy the sum specified if he was not so indebted until later. If that amount is an unspecified one, however, that person must not pay any amount to the employer until the director discharges him in writing or until he pays to the director the amount determined to be unpaid wages. The payments made to the director constitutes a good and sufficient discharge of the debt due, to the extent of the payments, to the employer as if they were made to him. The director must issue receipts for money paid.

Where the director has received money from third parties as described above, he must send to the employer and employees a notice giving them the details and advising that they may dispute the amount of the employee's claim as set out in the notice at a hearing before him or his representative. They must notify the director within ten days that they intend to do so. Upon completion of the hearing, the amount of unpaid wages is determined and a new notice is sent giving details and advising that further appeal may be made upon application within 14 days to a judge of the Court of the Queen's Bench for Saskatchewan. In both instances, if no appeal is made within the prescribed time, the notices become binding and the director can distribute the amounts he has collected. The distribution, in other circumstances, will be made in accordance with the orders issued. If, after having paid the employees' claims and the costs of application where applicable, the director holds a surplus of money, he must pay it to the employer.

Every employer is required to hold all wages accruing due or due to an employee in trust for the employee for the payment of those wages in the manner and at the time provided under this Act. If the wages are not actually held in trust, the employer is still deemed to hold such an amount in trust.

Where an employer has failed or neglected to hold wages in trust and the assets of the employer are not sufficient to pay in full the trust money owing to each of his employees, the employees must share among themselves the assets of the employer on a pro rated basis. In addition, the director of a corporation who is an employee of the corporation is not entitled to share with other employees the assets affected to their claims until such time as their claims for wages have been satisfied.

Moreover, wages accruing due or due are deemed to be secured by a security interest upon the property and assets of the employer or his estate, whether or not such property or assets are subject to other security interests. The security interest for wages is payable in priority to most other claims or rights in the property or assets, including any claim or right of the Crown, and, without limiting the generality of the foregoing, that priority extends over every security interest, lien, charge, encumbrance, mortgage, assignment, including an assignment of book debts, debenture or other security, whether perfected within the meaning of Saskatchewan's Personal Property Security Act or not, made or given, accepted or issued before or after the wages accrued due, without registration or other perfection of the deemed security interest for wages.

However, the security interest does not take priority over: (a) a purchase-money security interest that is taken prior to the wages accruing due and registered within the period specified in The Personal Property Security Act; (b) a mortgage of real property granted by an employer prior to wages accruing due; (c) the interest of a seller under an agreement for sale of real property or under a mortgage back agreement as well as the interest of a person who gives value for the purpose of enabling an employer to acquire rights in real property, to the extent that the value is applied to acquire such rights.

Notwithstanding these provisions, an employee is entitled to recover from his employer all wages owing and not paid to the employee by pursuing any lawful remedy provided for the recovery of wages and no employer can, in an action, suit or other proceeding brought against him by an employee for the recovery of wages, set off any amount against, or claim any reduction of, the employee's demand by reason of the delivery to him of goods, wares or merchandise on account of wages.

It is an offence to fail to comply with or violate any provision of this Act, to make a false or misleading statement with intent to deceive in any communication to the minister or his duly authorized representative or to interfere with or obstruct the minister or his authorized representative in the exercise of a power conferred on him. The burden of proof on the prosecution is on a balance of probabilities and it is not necessary to establish guilt of the accused beyond a reasonable doubt.

Where a corporation is involved, its directors, officers and agents who directed, authorized, assented to, acquiesed in or participated in the commission of the offence are guilty of an offence and liable on summary conviction to the fine provided for the offence whether or not the corporation has been prosecuted or convicted.

Where an employer is convicted of a failure to pay an employee his wages, the convicting court must, in addition to the fine imposed, order him to pay the amount of wages. An order thus given may be filed with the registrar of the Court of the Queen's Bench and, for the purpose of enforcement, is deemed to be a judgment of that Court.

The limitation period for a prosecution to be commenced under this Act, is of three years from the date of commission of the alleged offence.

NORTHWEST TERRITORIES

In the Northwest Territories, where an inspector finds that an employer has failed to pay an employee the minimum wage, any overtime pay or any vacation pay or holiday pay, he may determine the difference between the wages actually paid and the wages to which the employee is entitled. If the amount of the difference is agreed to in writing by the employer and the employee, the employer must pay that amount to the labour standards officer within five days and it will be paid over to the employee forthwith.

In addition, the labour standards officer (roughly the equivalent of a director in other jurisdictions) has similar powers with respect to any wages earned by an employee that have not been paid. Where he receives information that indicates that an employer has failed to pay to an employee all wages earned and is satisfied that the employee is not proceeding with any other action for the recovery of the unpaid wages, he may, at any time, make a certificate setting forth the wages owing, and send a copy of the certificate to the employer by registered mail, giving him 30 days to present evidence and make representations.

The matter can be appealed to the Labour Standards Board. After such investigation as it considers adequate, including the holding of hearings as it considers advisable and consideration of representations from the persons concerned, if any, the Board may confirm the certificate or cancel it and replace it with its own or take no further action.

The certificate may be filed by the Board with the clerk of the Court and thus become enforceable as a judgment of that court in favour of the Board.

An appeal lies to a judge of the Supreme Court from the Board upon any point of law raised before the Board and such appeal must be lodged within 30 days after the date of the decision appealed from. The decision of the judge is final.

The amount of wages set forth in the certificate constitutes a lien and charge in favour of the Board payable in priority over any claim or right, including those of the government and over every assignment of book debts, whether absolute or otherwise, every mortgage of real or personal property, and every bond and debenture. The lien and charge takes effect from the date the wages were earned and extends to all money due from any source to the employer including money due or accruing due from any contract, account receivable or insurance claim.

Where the Board has knowledge that any person including the government and its agencies is or is about to become indebted to the employer, it may demand of that person that the money otherwise payable by him to the employer be in whole or in part paid to the Board on account of the liability of that employer for wages owing. The Board must hold the money thus received until the time for an appeal has elapsed, or, following an appeal of the demand, a final decision is made with respect to the money.

The Board may order an employer to furnish a bond or other security conditioned for the payment of all wages in an amount and form, and for such period of time not exceeding two years, as the Board considers satisfactory. When the employer is required to furnish a bond or other security, the proceeds are applied in whole or in part, after written notice has been given to the employer, to any wages that the Board ascertains the employer subsequently owes to an employee. Where the employer has failed to furnish the bond or other security, a judge, upon an application of the labour standards officer, may restrain the employer from carrying on any industry or business until the bond or security is furnished and the costs of the application are paid.

It is an offence to contravene any provision of the Act or any order made pursuant to it, or to take measures of sanction against an employee that has or is about to testify in a proceeding under this Act or has given any information to the Board, the labour standards officer or an inspector regarding obligations of a defaulting employer. The guilty party is liable on summary conviction to a fine of $1 000 and to imprisonment for a term not exceeding one year. The convicting court may, in addition to these penalties, order the employer to pay to the employee any wages to which he is entitled.

Where a corporation commits an offence with regard to the payment of wages, any officer or agent of the corporation who knowingly directed, authorized, assented to, acquiesced or participated in the commission of the offence is, whether or not the corporation is prosecuted, a party to and guilty of the offence.

YUKON

In the Yukon, employment standards officers have the power to conduct any investigation or inquiry as may be necessary for the purposes of enforcing the Employment Standards Act, the regulation or any order made under this Act. The officers are empowered to remove documents, administer oaths and take and receive affidavits and statutory declarations. They may also apply to a judge for warrants ordering the production of documents or things if a person refuses to comply with the officers' requests of permitting entry to investigate a dwelling.

Where an officer finds that an employer has failed to pay an employee any wages, the officer is empowered to determine the difference between the wages actually paid and the wages to which the employee is entitled. If the amount of the difference is agreed to in writing by the employer and employee, the employer must, within three days after the date of the agreement, pay that amount to the employee or, if the director so orders, to the director who will pay it over to the employee forthwith.

The limitation period for complaints about unpaid wages or any other matter that can be lodged with an officer or the director is of one year after the date on which the subject matter of the complaints arose. When a complaint is lodged, the director or an officer is compelled to investigate, unless the matter is considered frivolous, vexatious, trivial or has not been initiated in good faith, and cease investigating where, in the opinion of the director, there is insufficient evidence to substantiate the complaint. Where the director is satisfied that wages are due, he is empowered to serve on the employer a demand that the employer pay to the director the amount of the wages due. The employer then has the option to appeal that decision to the Board or pay the amount within 14 days after being served with notice of the filing of a certificate by the director in the office of the clerk of the Court setting out the amount of the claim for unpaid wages confirmed by the director. When so filed, the certificate is deemed to be a judgment of that Court in favour of the employee and may be enforced as a judgment of the Court by the employee, or by the director on behalf of the employee, against the employer for the amount shown in the certificate.

The Employment Standards Board must hold a hearing within 14 days of receiving an application for an appeal. The Board is empowered also to determine the amount of unpaid wages and make any amendment to the certificate in order to make it accord with its decision.

The employer further has the right to appeal the Board's decision to the Court, within 14 days after it has been served.

An employee is not permitted, without the consent of the director, to institute and maintain a civil action once a certificate of unpaid wages has been issued and unless the certificate is cancelled and not replaced.

Unpaid wages set out in a certificate constitute a lien, charge and secured debt in favour of the employee against all the real and personal property of the employer including money due or accruing due to the employer from any source. This claim has priority over the claims of all preferred, ordinary or general creditors of the employer whether made or created before or after the date the wages became due, as well as over the claims of all secured creditors whose claims have been secured or registered after the date the wages became due.

Where the director has reason to believe that any person, including the Government of Yukon and its agencies, is or is about to become indebted to an employer named in a certificate of unpaid wages, the director may serve a demand in writing on that person requiring that the money payable to the employer be diverted to him to the extent of the amount set out in the certificate. If such a demand is not honoured, the director can enforce recovery of the amount as if it were unpaid wages and issue a certificate setting out the amount owed by that person to the employer. That certificate may then be filed in the office of the clerk of the Court and be enforced as a judgment of that Court against the third party. If a person to which a third party demand has been issued denies being indebted to the employer, the director may require him to produce information to substantiate his allegation.

Like most other Canadian jurisdictions, it is possible to enforce the provisions of this Act by using the criminal courts and procedures. A person who commits an offence is liable upon summary conviction to a specified fine. If a corporation commits an offence, any official who has consented or connived to commit it is liable, upon summary conviction, to a term of imprisonment as well.

Upon the application of the director, the presiding judge is empowered to order a person convicted of an offence to furnish to the director security, such as a bond, conditioned for the payment of all wages. The director is permitted to apply the proceeds of the security in whole or in part to any wages that he ascertains the employer subsequently owes to any employee.

The presiding judge, where an employer is convicted of an offence upon summary conviction, will be required to, in addition to any other penalty, order the employer to pay any wages to which an employee is entitled. In addition to this obligation, the presiding judge will have the discretionary power, where an employee has been illegally dismissed under this Act, to order the employer to pay compensation for loss of employment or to reinstate the employee in the employer's service.

The limitation period for prosecution of an offence under this Act will be of one year after the time when the subject matter of the proceedings arose.

Other Laws Affecting the Recovery of Wages

It is important to note that in every Canadian jurisdiction, many other laws pertain to the recovery of unpaid wages.

Federal laws dealing with bankruptcy and insolvency have a great effect on the rate of success of recovery when the default to pay is due to the bankruptcy or insolvency of the employer. The Bankruptcy Act and the Bank Act will supersede any provincial act which purports to protect wages in situations of bankruptcy and insolvency.

Many other types of laws also provide protection for wages. All jurisdictions (except the federal jurisdiction, New Brunswick, Nova Scotia and Prince Edward Island) have a Masters and Servants Act, sometimes called Recovery of Wages Act, which provides a summary proceeding for the recovery of unpaid wages. This sort of act awards to a justice of the peace or to a magistrate exceptional jurisdiction to act as a civil court to settle disputes between employer and employee. Generally, after having received a complaint, the justice or magistrate must summon the employer to a hearing and decide on the matter at that hearing. However, serious limits are imposed on the amount that may be recovered through this action. The amount varies from $50 to $500. In addition, a limitation period of one year or less to institute this action is usually required.

Moreover, all jurisdictions provide, generally in an act respecting corporations, that directors and officers of a corporation are liable for the employees' wages. This type of provision enables employees to "pierce the corporate veil" since the corporation is in itself a seperate and distinct legal entity from that of the directors and officers. Without such a provision, an employee's only recourse would be against the corporation. Ordinarily, this sort of provision renders the directors and officers of a corporation jointly and severally liable for unpaid wages. This means that an employee may exercise his recourse against any or all of the directors or officers. If he chooses to single out one of the directors or officers, the latter must then sue the others to recover from each their share of the claim. However, this recourse is usually limited to the amount of wages that became due during the time these persons were directors or officers of the corporation and only up to a maximum equal to a certain number of months' wages. This number varies from three to 12 months, depending on the particular statute. It is also generally required that the employee have successfully sued the corporation, within the prescribed limitation period, and have had the writ of execution returned unsatisfied in whole or in part. It is not rare to find many other conditions in addition in order to make this right effective against others.

In common law provinces, several laws create liens. The lien concept is similar to that of privileges found in Québec civil law. Both award to labourers, builders, suppliers of materials and to others (for ex. miners, woodsmen, engineers, architects, inkeepers, proprietors of warehouses, etc.) the right to register their claim at the Land Titles Office. The registration, if it conforms to the many conditions imposed, confers to the claim for amounts due for services rendered or materials supplied the status of a guaranteed or preferred claim and this claim becomes a charge against the real property for which the materials were supplied or the services rendered.

Since such liens cannot attach to land owned by the Crown, federal and provincial laws provide that contractors and sub-contractors engaged on the construction of public works must post a bond or furnish other sureties so that money is held by the Crown to ensure payment of the wages of the labourers. Generally, these acts also provide for holdbacks and enable the government to divert any money it owes to a contractor or sub-contractor to the payment of the employees' wages.

The posting of a bond may be required in other circumstances as well. In fact, most provinces have an act of general application that enables it to require any employer: to post a bond to cover any future non-payment of wages; to post a bond, year after year, until he has demonstrated his reliability in paying wages; to post a bond where there has been a complaint that he has failed to pay wages; or to post a bond where he has previously been convicted of failing to pay wages.

LIST OF ACTS AND REGULATIONS

Federal

Bank Act, (R.S.C. 1970, c.B-1), as amended;

Bankruptcy Act, (R.S.C. 1970, c.B-3), as amended;

Canadian Human Rights Act (S.C. 1976-77, c.33), as amended;

Equal Wages Guidelines (SI/78-155);

Canada Labour Code (R.S.C. 1970, c.L-1), as amended;
    Canada Labour Standards Regulations (C.R.C. 1978, c.986), as amended by SOR/82-747;
    Minimum Hourly Wage Order 1980, (SOR/80-659);

Fair Wages and Hours of Labour Act (R.S.C. 1970, c.L-3);
    Fair Wages and Hours of Labour Regulations (C.R.C. 1978, c.1015);

Holidays Act (R.S.C. 1970, c.H-7);

Labour Adjustment Benefits Act (S.C. 1980-81-82-83, c.89);

Wages Liability Act, (R.S.C. 1970, c.W-1);

Winding-Up Act, (R.S.C. 1970, c.W-10), as amended.

Alberta

The Employment Standards Act (S.A. 1980, c.62);

Employment Standards Act Regulations:
Minimum Wage Regulation (145/81);

Hours of Work and Overtime Pay Regulations:
(Ambulance Drivers and Attendants) (A. Reg. 77/81);
(Field Services) (A. Reg. 73/81);
(Highway and Rail Construction and Brush Clearing) (A. Reg. 79/81);
(Irrigation Districts) (A. Reg. 75/81);
(Nursery Industry) (A. Reg. 76/81);
(Oilwell Servicing) (A. Reg. 74/81);
(Taxi Cab Industry) (A. Reg. 80/81);
(Trucking Industry) (A. Reg. 78/81);

Alberta (continued)

Construction Industry and Brush Clearing
(Vacation Pay and General Holiday Pay)
Regulation (A. Reg. 81/81);
Exemption Regulation (A. Reg. 83/81);
Scheme Employment Regulation (A. Reg. 101/81);

Adolescents and Young Persons Employment Regulation
(A. Reg. 82/81);

The Child Welfare Act (R.S.A. 1970, c.45);

Coal Mines Safety Act (S.A. 1974, c.18);
Individual's Rights Protection Act (S.A. 1972), as amended;

School Act (R.S.A. 1970, c.329), as amended.

British Columbia

Employment Standards Act (S.B.C 1980, c.10);
Employment Standards Regulation (B.C. Reg. 37/81), as amended;

Human Rights Code (R.S.B.C. 1979, c.186);

Public Construction Fair Wages Act (S.B.C. 1976, c.43);

Schools Act (R.S.B.C. 1979, c.375).

Manitoba

Construction Industry Wages Act (R.S.M. 1970, c.C190), as amended;

Employment Standards Act (R.S.M. 1970, c.E110), as amended;
Regulations Respecting Minimum Wages and Working Conditions
(M.R.R. E110-R1), as amended;
Regulation Prescribing Circumstances in Which a Lay-off Shall
Not be Deemed to be a Termination of Employment (M.R.261/82);

Payment of Wages Act (C.C.S.M., c.P15), as amended;

Remembrance Day Act (R.S.M. 1970, c.R80), as amended;

Retail Businesses Holiday Closing Act (C.C.S.M., c.R120);

Manitoba (continued)

School Attendance Act (R.S.M. 1970, c.S20), as amended;

Shops Regulations Act (R.S.M. 1970, c.S110), as amended;

Vacations with Pay Act (R.S.M. 1970, c.V20), as amended;

Wages Recovery Act (R.S.M. 1970, c.W10).

New Brunswick

Closing of Retail Establishments Act (R.S.N.B. 1973, c.C-7), as amended;

Employment Standards Act (S.N.B. 1982, c.E-7.2), as amended;

Human Rights Code (R.S.N.B. 1973, c.H-11), as amended;

New Brunswick Day Act (S.N.B. 1975, c.N-4.1);

Occupational Safety Act (S.N.B. 1983, c.O-0.2);

Schools Act (R.S.N.B. 1973, c.S-5), as amended.

Newfoundland

Child Welfare Act (S.N. 1972, c.37), as amended;

Labour Standards Act (S.N. 1977, c.52);
    Labour Standards Regulations, 1985 (N. Reg. 271/84);

Newfoundland Human Rights Code (R.S.N. 1970, c.262), as amended;

School Attendance Act, 1978 (S.N. 1978, c.78).

Nova Scotia

Construction Safety Act (R.S.N.S. 1967, c.52), as amended;

Labour Standards Code (S.N.S. 1972, c.10), as amended;
    Regulations (O.C. No. 76-1203),
    General Minimum Wage Order (N.S. Reg. 84/77), as amended by
    General Minimum Wage Order (N.S. Reg. 125/84);

Education Act (R.S.N.S. 1967, c.81), as amended;
Remembrance Day Act (S.N.S. 1981, c.10).

Ontario

Education Act (S.O. 1974, c.109), as amended;

Employment Standards Act (R.S.O. 1980, c.137), as amended;
    Fruit, Vegetable and Tobacco Harvesters Regulation (O. Reg. 320/75), as amended;
    Benefit Plans Regulation (O. Reg. 654/75), as amended;
    General Regulation (O. Reg. 803/75), as amended;
    Termination of Employment Regulation (R.R.O. 286), as amended;
    Domestics and Nannies (O. Reg. 1013/80);

Occupational Health and Safety Act, 1978;
    Industrial Establishments (O. Reg. 658/79);
    Construction Projects (O. Reg. 659/79);
    Mines and Mining Plants (O. Reg. 660/79);

One Day's Rest in Seven Act (R.S.O. 1970, c.305);

Retail Business Holidays Act (S.O. 1975 (Second Session) c.9).

Prince Edward Island

Human Rights Act (S.P.E.I. 1975, c.72), as amended;

Labour Act (R.S.P.E.I. 1974, c.L-1), as amended;
    P.E.I. Regulations:
    Minimum Wage Order 1/85 (EC 126/85);

Minimum Age of Employment Act (R.S.P.E.I., 1974 c.M-11);

School Act (R.S.P.E.I. 1974, c.S-2).

Quebec

An Act Respecting Labour Standards (S.Q. 1979, c.45), as amended;
    Regulation Respecting Labour Standards (O.C. 873-81);
    Ordinance No. 3, Vacation (O.C. 2122-72), as amended;
    Ordinance No. 4, General (O.C. 2123-72), as amended;
    Ordinance No. 14, 1973, Retail Food Trade (O.C. 783-73), as amended;

Charter of Human Rights and Freedoms (R.S.Q. 1977, c.C-12), as amended;

Quebec (continued)

Civil Code (Masters and Servants, Art. 1665A-1670);

Collective Agreement Decrees Act (R.S.Q. 1977, c.D-2), as amended;

Commercial Establishments Business Hours Act (R.S.Q. 1977, c.H-2), as amended;

Education Act (R.S.Q. 1977, c.I-14), as amended;

Regulation Concerning Industrial and Commercial Establishments (O.C. No.3787/72);

Construction Safety Code (O.C. 1576-74);

Manpower Vocational Training and Qualifications Act (R.S.Q. 1977, c.F-5), as amended;
Regulation Respecting Collective Dismissal Advance Notice (O.C. No. 717-70);
National Holiday Act (S.Q. 1978, c.5), as amended;

Occupational Health and Safety Act (S.Q. 1979, c.63).

Saskatchewan

Education Act (S.S. 1978, c.17);

Family Services Act (R.S.S. 1978, c.F-7);

Labour Standards Act (R.S.S. 1978, c.L-1), as amended;
Labour Standards Regulations (S. Reg. 317/77), as amended;
Minimum Wage Board Order No. 1 (1985) (R.R.S. c.L-1, Reg.2) (O.C. 613/85);
Minimum Wage Board Order No. 2 (1981) (S. Reg. 203/80);
Minimum Wage Board Order No. 3 (1981) (S. Reg. 204/80);

Wages Recovery Ordinance (R.S.S. 1978, c.W-1);

Occupational Health and Safety Act Regulation (O.C. 437/81).

Northwest Territories

Fair Practices Act (R.O.N.W.T. 1974, c.F-2);

Labour Standards Act (R.O.N.W.T. 1974, c.L-1), as amended;
- Annual Vacations Regulations (C.O. No. 274-68);
- Labour Standards Wages Regulations (C.O. No. 140-74);
- Employment of Young Persons Regulations (C.O. No. 133-79);

School Act (R.O.N.W.T. 1974, c.S-3);

Wages Recovery Act (R.O.N.W.T. 1974, c.W-1) as amended.

Yukon Territory

Labour Standards Act (R.O.Y.T., 1971 c.L-1), as amended;
- Minimum Wage Order No. 84/1, (O.I.C. 1984/340);
- General Exemption Regulation (O.I.C. 1984/344);
- Fair Wage Schedule (O.I.C. 1985/61);

School Act (R.O.Y.T. 1975, c.S-3);

Wages Recovery Act (R.O.Y.T. 1975, c.W-1).